



JUDICIARY OF
ENGLAND AND WALES

**CITY OF WESTMINSTER MAGISTRATES' COURT
(SITTING AT BELMARSH MAGISTRATES' COURT)**

**BEFORE:
HOWARD RIDDLE
SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)**

**BETWEEN:
CPS
-V-
MOHAMMAD RAZAUL HAQUE
AND
EMDADUR CHOUDHURY**

7 MARCH 2011

Mr Choudhury (represented by Mr Mitchel) and Mr Haque (represented by Mr Qureshi) have pleaded not guilty to an allegation of causing harassment alarm and distress contrary to section 5 of the Public Order Act 1986..

The evidence in the case came primarily from a compilation of film clips taken contemporaneously by various sources. This shows the defendants among a small group of people in a pen outside the Royal Geographical Society on the morning of 11 November 2010. This group was identified as being from Muslims Against Crusaders (MAC). On the other side of the road, and also in a pen apparently erected by the police, is another small group of people said to be from the English Defence League (EDL).

At almost exactly 11 o'clock one of the MAC demonstrators is seen and heard to announce that the two minutes silence has begun, and for the next two minutes the MAC demonstrators are heard to chant loudly and repetitively "British soldiers burn in hell". The chanting is led by a man with a megaphone who is not either of these defendants. After almost exactly 2 minutes, what appears to be two large plastic orange poppies are placed at the centre front of the MAC demonstration and set on fire.

Mr Kibble gave live evidence. He told me he had taken time off work to go with his friend Paula Allen to see the "March for Heroes" which he understood would end at the Albert Memorial at about the time of the two minute silence. In fact the march did not arrive then and he went back to the scene of the two rival demonstrations, and stood on the opposite, north, side of the carriageway. There were a number of other members of the public, not

associated with the rival demonstrations, in the area. He had earlier been told that the demonstrators were expected to chant through the two minute silence and burn a wreath of poppies. He told me that at 11 o'clock he and the police officers near him observed the silence. The English Defence League demonstrators also observed the silence. However the chanting continued throughout the two minute period and at the end he saw flames coming from what he believed to be a wreath of poppies. His stomach turned. He felt tears of anger and rage at the disrespect, and felt he should do something but "did not wish to bring himself down to their level."

There was also evidence from an officer, PC Laws, who identified the man seen on the various film clippings to be setting fire to the plastic poppies as Mr Choudhury. There was some agreed evidence, including statements from police officers and from Paula Allen. There was an interview at which each defendant had produced a prepared statement that was read to this court. The defendants did not give evidence, having both unsuccessfully submitted that there was no case to answer.

The Crown put this case on the basis that these two defendants were acting together in the act of burning the poppies. I was asked to view the background, and in particular the chanting during the two minutes silence, as context rather than an offence in its own right. It was the prosecution case that Mr Choudhury put the plastic on the ground and set fire to it and that Mr Haque was acting together with him, as could be seen from contact they had in the period shortly before the poppy burning episode. Moreover, as the poppies burnt so Mr Haque was positioned immediately behind the flames and held up a flag. Thus although he had not either placed the poppies or set fire to them, he and Mr Choudhury were clearly acting together, it was said, in a pre-planned event. The Crown specifically did not ask me to draw any inference from silence, save in so far as the issue with Mr Choudhury might have been one of identification.

The first question for me is whether either or both of these defendants were involved in the burning of the poppies. Mr Haque is seen on the film on a number of occasions. Generally he is at the back, against a wall. He walks from one side to another. He is seen with the man who later sets fire to the poppies. Shortly before 11 o'clock he moves to the side of the demonstration. The fire lighter is nearby and is seen talking to a man in civilian clothing on the other side of the pen. Then Mr Haque moves back to the centre of the demonstration and is seen at the forefront, with a flag, and behind the burning poppies. He was originally arrested because it was believed that he had physically set fire to the poppies. This was conceded to be a mistake, corrected before the day of the hearing after viewing the films. The evidence from the film is strong. There are clear links between Mr Haque and the man who lights the poppies. Mr Haque comes forward at the exact time that the poppies are set ablaze. He has a flag and is in prime position for publicity. There is a strong inference that he and probably other members of the group knew that the culmination of the two minutes chant would be this burning. People can be seen making way at the relevant time. I believe this behaviour clearly called for an explanation from Mr Haque. However, I was expressly invited by the prosecution not to draw any inference from his failure to give evidence. It would be unfair, and indeed wrong, for me to draw such an inference now, when the defence has not been required to deal with that aspect of the case in closing submissions. Instead Mr Qureshi, for Mr Haque, took me through the films once again. He showed me that the man who had set fire to the poppies had associated with a number of different people during the

course of the filming. He persuaded me that there was at least a small possibility that his client's presence at the crucial time was not linked with earlier contact with the other man, but was simply a coincidence. As I am precluded from drawing an inference from his failure to give evidence, there remains a small doubt. He is entitled to the benefit of the doubt and I find him not guilty.

As for Mr Choudhury, the case had initially proceeded on the basis that identity was not in dispute. However, shortly before the prosecution case closed, Mr Mitchell on his behalf made identity an issue. As a result PC Laws gave evidence. He knows Mr Choudhury well. He identified Mr Choudhury as the man who set fire to the poppy. He was cross-examined about the statement he made on the day, where he does not refer to Mr Choudhury. His evidence was that he did not mention Mr Choudhury because he did not see him setting fire to the poppy. His view was obscured by press. Although he did not recognise him at the scene he recognises him on the film footage. In addition the Crown pointed to photographs of this defendant's shoes. The shoes taken from Mr Choudhury and exhibited for me are an identical make and style to those worn by the man who owned the poppy. This was very strong, indeed compelling, evidence of identification. It was open to Mr Choudhury to give evidence and to dispute his identity. He was given the appropriate warning when it was announced that he did not propose to give evidence. Moreover he was legally represented. The only inference I can draw from the evidence I heard, and from his own failure to give evidence, is that he was indeed the person who burned the poppy. I am sure that he did.

A number of other points are made on this defendant's behalf. It was suggested that his behaviour did not amount to an offence under s.5, and that one of the specific defences provided by subsection (3) applies.

A person is guilty of this offence if he –

- a. uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- b. displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Under subsection (3) it is a defence for the accused to prove –

- a. that he had no reason to believe that there was any person within the hearing or sight who was likely to be caused harassment, alarm or distress, or
- b. [does not apply], or
- c. that his conduct was reasonable.

Before deciding whether the elements of the offence are made out, or any of the defences applies, it is necessary to consider this case in context.

The ceasefire at 11am on 11 November 1918 has huge significance for most people in this country. It is seen as marking the end (at least in western Europe) of a terrible war in which millions of people died. The event has been marked annually for the past 90 years or so. It is

a time when we remember those who have died in the service of their country. The act of remembrance has come to include those who have died in subsequent wars and conflicts. The two minutes silence remains widely respected. Even now the business of the courts, and indeed other everyday life, usually comes to a standstill at 11 o'clock on 11 November. There is a further service on the nearest Sunday to Armistice Day, also known as Remembrance Sunday. It is popularly known as Poppy Day. This is because in the days leading up to Armistice Day many people wear poppies in their button-holes. This is a sign of respect and, as I understand it, a source of income for the Royal British Legion. The poppy itself is a vivid symbol of the trenches in Flanders where many of the deaths in the First World War occurred, at least as far as British soldiers were concerned. No doubt the event means more to some people than others, and no doubt it symbolises different things to different people. However it is undoubtedly the case that, for a large section of the population, remembering those who died in the service of their country is of genuine significance. The two minutes silence is seen as a mark of respect.

Against that background, interrupting the two minutes silence by chanting "British soldiers burn in hell", followed by the burning of poppies, is behaviour that is bound to be seen as insulting. It insults the memory of the dead. It insults those that commemorate the dead. It insults those who have lost loved ones. It insults those who use this occasion publicly to show their gratitude for lives sacrificed. (As well as being insulting it may also be seen as abusive, but I have not had to turn my mind to that.)

It is behaviour that is likely to cause distress. (It may well also cause harassment or alarm, but I have not had to turn my mind to that.) On the facts of this case, it seems certain that the burning of poppies was intended to have such an effect. Mr Mitchell says that the witness in this case, Mr Kibble, had been warned by police in advance of what was expected to happen. He could have avoided events. That is not to the point. Firstly I can see no reason why he should have been expected to avoid what was happening. Secondly this is an objective test. It does not revolve around a single individual. The fact that there were people within the hearing or sight of this demonstration who were likely to be distressed is obvious. Many people, perhaps most, would have felt as Mr Kibble told me he felt. In those circumstances I need not consider further the defence in s.5(3)(c).

The real issue in this case is whether the conduct was reasonable. Although I heard no evidence directly to this effect, there is a clear inference that the MAC demonstration was intended to make a political point. Article 10 of the European Convention on Human Rights allows freedom of expression. A person's conduct will be reasonable if he is exercising ECHR rights in the circumstances in which an interference with that exercise would not be justified under Article 10(2). There is case law on this subject. I was referred to *Percy, Hammond*, and *Norwood* as well as the most recent case of *Abdul*.

It is common ground that this court must consider the question of proportionality when considering whether this defendant's conduct was reasonable.

Under Art.10 ECHR everyone has the right to freedom of expression. However it is not an unlimited right. It is subject, among other things, to the prevention of disorder, the protection of the reputation of others, and the protection of the rights of others. However, the restrictions on freedom of expression are to be narrowly construed. In my view, the

rights of others includes the right to express publicly support, sympathy and remembrance for the armed forces.

So the starting point is the importance of the right to freedom of expression. Legitimate protest can be offensive to some. Minority views can be freely expressed, even if distasteful to others.

The context in which these events took place is of the first importance. It was 11 November which, as described above, for 90 years has had a special significance to many people in this country. It was at 11 o'clock when two minutes silence is traditionally observed. It is at a time when British servicemen are dying regularly in the course of their duties. It was at or near a place where some, at least expected a "March for Heroes" to end. The march was a fundraiser for injured servicemen. It was at a time and place where you could expect people to be remembering family friends, distant relatives and fellow countrymen who had died in a series of wars and conflicts during the past century. It is a solemn occasion. All this is public knowledge. It would be known to the defendant as it is known to me.

I have not heard evidence from Mr Choudhury. On the basis of the evidence I did hear there is an overwhelming inference that the timing and location were deliberate. He read or handed in a prepared statement at the police station. Although he did not give evidence to me, I am invited by his counsel to place evidential significance on that prepared statement where he gave his reasons (I paraphrase) as:

1. To expose the true meaning of the poppy. The original meaning has been forgotten and the poppy is now used as a political tool to silence criticism of the illegal war. [He does not say which war he refers to].
2. The poppy is part of clever propaganda, which ignores war crimes committed by British soldiers in Iraq.

He says he did not intend to cause harassment, alarm or distress, and did not use threatening, abusive or insulting behaviour. I have already found his behaviour was insulting. His intention is relevant (section 6(4)) and to the test of proportionality. I have no doubt that it was the intention of this protest to shock and offend. Shocking and offending people is sometimes a necessary part of effective protest. Here, an obvious consequence of this process was to show disrespect for dead soldiers, who should burn in hell. The two minute chanting, when others were observing a silence, followed by a burning of the symbol of remembrance was a calculated and deliberate insult to the dead and those who mourn or remember them.

It was said in *Abdul and others* that there can be no 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." In fact, I am satisfied there can be other justifications for invoking the criminal law in this context, but will start by considering the threat to public order. Here there was a police presence. The rival groups (MAC and EDL) were comparatively small and behind pens. Tony Kibble, who impressed me as a member of the public with typical feelings about Remembrance Day, and apparently mild mannered, felt physically sick. He felt tears of anger and rage at the disrespect, and felt he should do something but did not wish to bring himself down to their level. The burning

provoked furious reaction from EDL members who surged forward and had to be controlled by police. At some stage a man jumped over the barrier into the pen holding the MAC members, grabbed a flag and a scuffle took place before this man was restrained and removed by police. Mr Mitchell suggested this happened before the poppy burning. The evidence suggest otherwise (see comments of the man arrested to police). Even if it was before it shows the possibility of public disorder. When the two defendants in this case were arrested an officer was injured and received hospital treatment. The arrests appeared to deflate the MAC, who then left the scene and went back to Whitechapel. Legitimate protesters have a right to be protected from violent opposition. It is no part of my function to assess the value or otherwise of this protest. However, if the memory of dead soldiers is publicly insulted, at a time and place where are likely to be gathered people who have expressly attended to honour those soldiers, then the threat to public order is obvious. Here it is hard to imagine that a public order disturbance was not intended.

In these circumstances I need not decide whether there was another justification for invoking the criminal law. It may be that using insulting behaviour likely to cause distress when people are gathered publicly to remember the dead is itself justification for invoking the criminal law, to protect the rights of others.

In the circumstance that occurred in this case, invoking the criminal law to interfere with freedom of expression is proportionate. The defence of reasonableness does not prevail here. The defendant is guilty of the charge.

Howard Riddle

Chief Magistrate

7 March 2011