



JUDICIARY OF
ENGLAND AND WALES

HOWARD RIDDLE, SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)

IN THE WESTMINSTER MAGISTRATES' COURT

**REGINA
V
JOHN TERRY**

13 JULY 2012

JUDGMENT

John Terry faces one allegation. It is said that on the 23rd October 2011 at Loftus Road Stadium London, W12 he used threatening, abusive or insulting words or behaviour or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress and the offence was racially aggravated in accordance with section 28 of the Crime and Disorder Act 1998, contrary to Section 5 of the Public Order Act 1986 and section 31(1)(c) and (5) of the Crime and Disorder Act 1998.

The case was prosecuted on behalf of the crown by Mr Penny, and defended by Mr Carter-Stephenson QC leading Mr Daw. I heard evidence over three days and submissions yesterday.

The Crown alleges that the offence occurred towards the end of a Premier League football match between Queens Park Rangers and Chelsea on the 23rd October 2011. The match was televised live and the recordings form a central part of the evidence.

There was an initial dispute between the defendant, John Terry (Chelsea) and Anton Ferdinand (QPR), inside the QPR penalty box. Shortly afterwards Mr Terry returned to the Chelsea half of the pitch and turned to face the opposition. At that stage Mr Ferdinand made what was described as a fist pumping gesture towards the defendant, accompanied by abuse.

The Crown say that Mr Terry responded by aiming the words “fuck off, fuck off, yeah, yeah and you fucking black cunt, fucking knobhead”, and possibly one or more other words, at Mr Ferdinand.

The defendant does not deny that he used the words, “fuck off, fuck off”, “fucking black cunt” or “fucking knobhead”. His case is that his words were not uttered by way of abuse or insult nor were they intended to be abusive or insulting.

He says they were used after a perceived false accusation made by Mr Ferdinand, the accusation being to the effect that the defendant had used the term “black cunt” during their exchanges with each other. [The defence do not say whether Mr Ferdinand actually believed the defendant had used that expression or merely made the accusation in order to elicit a reaction.] Alternatively the case advanced on the defendant’s behalf is that although Mr Terry genuinely believes that Mr Ferdinand made a false allegation against him, nevertheless this could be a misunderstanding.

[It may be worth mentioning here that the issue for this court to decide is not whether Mr Terry is a racist, in the broadest sense of the word. I have received a substantial volume of unchallenged evidence from witnesses, both in person and in writing, to confirm that he is not. I understand why Mr Terry wants to make this point. His reputation is at stake. Although I am grateful to all those witnesses who have taken the trouble to provide information on this point, it does not help me in reaching a verdict. It is not relevant to the issue I must decide.]

The issue between the defendant and the Crown is whether Mr Terry uttered the words “fucking black cunt” by way of insult. If he did then the offence is made out, regardless of what may have motivated him.

It is not in dispute that if the facts are as alleged by the Crown then the offence is made out. There is also no dispute that John Terry directed the words “black cunt” in the direction of Anton Ferdinand. If he did that to insult or abuse him then he is guilty of the offence.

The question for me is whether I am sure that the words were used as an insult, or whether it is possible, as the defence assert, that he was, or believed he was, merely repeating an allegation made to him, and dismissing it.

The starting point for the evidence is the television coverage. From that coverage it seems plain, and indeed is not in dispute, that John Terry directed the words “black cunt” in the direction of Anton Ferdinand. It is equally clear, and equally not in dispute, that he also directed the words “fucking knobhead” at Anton Ferdinand. Other words appear to be spoken. Both parties have agreed that expert evidence from lip readers is necessary to say what those words are. It is axiomatic that expert evidence is not called unless a particular expertise is needed to give an opinion to the court which the court cannot readily form itself. Mr Penny points out, correctly, that the duty of an expert witness is to furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the court to form its own independent judgement by the application of those criteria to the facts proved in evidence. In deciding what weight to attach to the evidence of an expert, the court should take into account the extent to which that evidence is based on other established facts.

At least one of the lip readers thought that an expert is necessary to determine body language. She was not prepared to assess body language herself. That may well be an entirely professional approach for a lip reader to take, and certainly I do not in any way criticize that view. However Mr Penny is undoubtedly correct that this court can form a view about demeanour from

the TV clips themselves. It is obvious, and again not in dispute, that at the time that John Terry said “black cunt” and “fucking knobhead” he was angry.

There is then the evidence of the lip readers. Both the lip reader instructed by the prosecution, Susan Whitewood, and the lip reader instructed by the defence, Laraine Callow, are clearly experts in their field. Nobody doubted their expertise. Helpfully they met together before the hearing and prepared a joint expert report. I can summarise the position, I hope not over-simply, in this way. Ms Whitewood is of the opinion that the words spoken by John Terry are “Yeah and I [obstruction] you/ya fucking black cunt (pause) fucking knobhead”. Ms Callow is of the same opinion. However both experts agree that there is the possibility that they are mistaken and in particular that “you/ya” may be “a” or indeed a number of other similar sounds. It is common ground that a lip reader is unable to comment on “tone of voice” or how words are said. In this context the experts cannot say whether the words observed were in a question form. Both experts agreed on the limitations of lip reading spelt out in Appendix 2 of Laraine Callow’s report, with “extremely minor differences”. In her appendix Ms Callow says, among other things, that “There is therefore a fundamental unreliability in being able to interpret speech visually with any certainty: it is an art rather than a precise skill. ... Lip reading in any given situation comprises a large measure of guesswork: ... words cannot be easily predicted by the person lip reading if they are not already known to him/her. ... A key factor in lip reading is grasping the conversational context: knowing what the other person is talking about. ... if there are sudden changes of topic within a conversation – and this is quite usual in all situations – the person lip reading is posed with great difficulty.” In her summary of the reliability of this type of evidence Ms Callow says she remains very sceptical in general terms about the reliability of lip read evidence and: “Even if it is to be presented, I am concerned about whether those who must take decisions on the basis of lip read evidence will understand the full force of its unreliability.”

As Mr Penny points out, the evidence of the lip readers is to a very large extent validated by the evidence of Mr Terry himself. In cross-examination he

accepted that he appears to use the word “and” and as a result the only difference between the prosecution and the defence is that the Crown alleged he says “you/ya fucking black cunt” whereas the defence case is that he said “a fucking black cunt?” There are missing words, and I have not been prepared to speculate as to what they may be,

There is then the evidence of Anton Ferdinand that he at no stage accused John Terry of calling him a black cunt. He gave detailed evidence about what happened on the pitch, and about what happened in the Chelsea dressing room afterwards and then about how he learned about the footage posted that evening on YouTube. I make the following comments about that evidence. (I will not set out in detail the evidence of this witness, or indeed of any other witnesses.)

As Mr Carter-Stephenson points out, there are a number of discrepancies between this witness’s evidence and other evidence. Specifically he points to the film evidence showing a challenge in the penalty box. This shows that Mr Ferdinand’s account is wrong and that Mr Terry was not blameworthy for claiming a foul and therefore a penalty. He points out that the evidence suggests that Mr Ferdinand himself lost control by following Mr Terry, angry, and insulting him over and over again. He points to the discrepancy between the witness’s memory of what he is shouting (at an earlier stage) and the lip reading evidence. There are discrepancies between the evidence of Mr Cole and Mr Ferdinand. In cross-examination Mr Ferdinand at first appeared to deny that Mr Terry said, in the dressing room, “do you think I called you are fucking black cunt?” In fact this was in his statement as one of two alternatives. There is another piece of significant evidence, namely that he did not in his statement provide full and accurate details of the words he used to Mr Terry shortly before the comments at the centre of this trial. It is clear that he was offered the opportunity to add to his statement by the police, but declined. This is an important fact and I will return to it later.

Although these defence points are well made, they do not undermine the central evidence of this witness that on the pitch he did not accuse the

defendant of racially abusing him. In his final submissions Mr Penny describes Mr Ferdinand as “brave” for giving evidence. I think this is a reasonable description. I am satisfied that he would have preferred not to be involved in this trial at all. I am satisfied that there was little or no good reason for him to lie about the central issue in this case. Mr Penny provides good reasons for that conclusion. While there are indeed discrepancies in his evidence I think it is unlikely that on the central point he is lying. I have no significant doubts about his integrity. There are doubts about what he said at the time of the second fist pumping gesture. He may easily have misremembered. I also have a doubt when he says he was unaware of the crucial comment made to him by John Terry. They were directed at him. He had had eye contact with Mr Terry and may well have been looking for a reaction from him. I accept his evidence about this may well be true, as he turned his attention back to the game. However, I cannot discount the possibility that he was aware of the comments directed at him, and found it easier to say that he wasn't. If that is the case it would be wrong of him, but understandable. To make it clear, I am not saying he was aware, just that he may have been, despite his evidence to the contrary. I consider this point again, later.

To summarize:

- There is no doubt the words “Fucking black cunt” were directed at Mr Ferdinand.
- Overall I found Anton Ferdinand to be a believable witness on the central issue.
- It is inherently unlikely that he should firstly accuse John Terry of calling him a black cunt, then shortly after the match completely deny that he had made such a comment, and then maintain that false account throughout the police investigation and throughout this trial. There is no history of animosity between the two men. The supposed motivation is slight.
- Mr Terry's explanation is, certainly under the cold light of forensic examination, unlikely. It is not the most obvious response. It is sandwiched between other undoubted insults.
- I believe that he is an unwilling witness, and would have preferred that this matter not come to court.

- There were discrepancies in his evidence. To a large extent this is what you would expect from a truthful witness. Much of what happened; happened in a brief period of time, in circumstances where the result of the game was more important than any individual argument between two players. I will return later to the discrepancies.

Adding these facts together it is clear that the prosecution has built a strong case. I had no hesitation in refusing a submission of no case to answer based on those facts.

So the question for me now is whether there is a doubt that the offence is made out. In all criminal courts in this country a defendant is found guilty only if the court, be it a jury, magistrate, or a judge, is sure of guilt. If there is a reasonable doubt then the defendant is entitled to be acquitted.

Certainly there is doubt about some of the individual facts.

As far as the precise words that were spoken is concerned, the experts agree that there is a doubt about the word "you". Similarly they both make it clear that lip-reading is unable to identify whether the statement was made as a question or in what tone of voice it was said.

There is then the fact that nobody (apart from John Terry) has given evidence about hearing what was said. Either nobody heard it, or nobody was prepared to come to court and tell me what they heard. Anton Ferdinand says he did not hear it. The defence pointed out that this is surprising as the words were clearly directed at him at a time when he was facing John Terry and involved in an exchange of insults with him. I bear in mind the significant distance between the two men at the time; the noise; and the evidence of Mr Cole that he could not hear what was said by either person.

There are a number of possible explanations for this. The first is that with the ball once again coming into play, Anton Ferdinand concentrated on the game rather than on the exchange. So he missed the words. Another

possibility, and this is a possibility suggested to me by the defence, is that he did indeed accuse John Terry of calling him a black cunt, knows perfectly well that the words observed on the TV footage were in response to that comment, and is lying about it. I think that is unlikely. Another explanation, not one advanced by either party but which certainly crossed my mind, is that Anton Ferdinand did hear the words, did not want to take it any further, agreed in the changing room that he had heard nothing and stuck by that account. In short he may initially have wanted simply to move on, and as things snowballed found it expedient to stick with that position.

Another doubt about the facts is what was said by Anton Ferdinand at the time of his obscene gesture to John Terry, shortly before the words “black cunt” were spoken. His initial account does not refer to any words being spoken at that stage. This is even though, as was put to him in cross-examination and he appeared to accept, he knew by the time that he made his statement that John Terry was saying that his words were in response to something said by Anton Ferdinand. In fact the camera shots show reasonably clearly that he was saying something. In evidence he said that he was continuing his taunts about John Terry’s affair with a team-mate’s wife. I accept the defence argument that it is surprising that this was not made explicit in his initial statement. An initial statement, made shortly after events, is usually a witness’s best recollection. This witness had his memory refreshed by TV footage. However, so long after the event it seems to me unlikely that he would remember the exact words that he spoke when these had not been recorded closer to the time.

A related point is the way that Mr Terry’s facial expression changed at the moment he uttered the words “black cunt”. He tells me, and I accept, that he has received countless taunts, from players and spectators, about an alleged relationship with a team-mate’s wife. By the time of this match the taunts had occurred over an 18 month period. He had learned to live with them. They did not anger him. Later I heard evidence from Mr Buck and Mr Wilkins about his unusual qualities of self-control and leadership. I

also heard about his disciplinary record. He has been sent off four times in 600 matches, and never for abuse. There can be little doubt from this, and from other evidence that I need not repeat here, that Mr Terry has, over the years, been subjected to the most unpleasant personal abuse and has had to learn to keep calm and continue to play football. On the account given by Anton Ferdinand, there is no obvious reason why John Terry should suddenly become annoyed by the repetition of this taunt. He had heard it before many times. He did not react angrily the first time Anton Ferdinand said it, nor did he immediately react angrily when the obscene gesture was made. Despite his general self-discipline, it could have been a sudden loss of self-control. Almost everyone can snap sometimes. Mr Penny demonstrated to me from the television clips that the defendant did indeed react to later incidents involving other players, notably the QPR goal keeper. On the other hand the footage of Mr Terry as he says "black cunt" adds credence to the defence account that something of a different order had just been said to him, something altogether more insulting. Most of us will agree that being accused of racism and making racist comments is shocking and offensive. Society does not tolerate racist comments, nor do England football players, nor does the law. Any ordinary person wrongly accused of making a racist comment would be shocked and angered.

There is then the evidence of John Terry himself. He was expertly and forcefully cross-examined. He maintained his account. Moreover he has been fully cooperative with the process throughout. He gave a detailed account to the FA five days after the game. He answered every question, and having heard the tape of that interview it is clear that he did so without prevarication. He then further co-operated with the police enquiry. I suspect that the decision to present a prepared statement was not his idea, but he cannot be blamed for taking advice. Once again he answered all the questions asked, even when his lawyer appeared to be suggesting that the questions were not relevant. As I have mentioned earlier, some inconsistencies are to be expected in any witness's recollection. As time goes by, recollections change. It is not only that people misremember. All

experienced criminal lawyers have come across honest witnesses whose initial tentative evidence turns into a firm belief over our period of time. A good example is the one mentioned by Mr Carter-Stephenson. Tentative identification at an identification parade can become certain identification by the time of trial. There are reasons for this, but here I need only record that it happens. In everyday life misremembering and becoming more certain happens to us all. In this case Mr Terry has had the advantage of contemporaneous film coverage to assist his memory with what happened on the pitch.

The prosecution point out that in the FA interview Mr Terry was asked “can you remember exactly what you said back to him?” and replied [page 65] “I think it was something along the lines of, “You black cunt, you’re a fucking knobhead”. The Crown say that this represents a true statement. It was a slip by Mr Terry. It is evidence of his guilt. Certainly it is a very significant statement. It may well represent the truth. On the other hand it is qualified by the words “I think it was something along the lines of” and followed by the words “so I’m repeating, basically, what he’s said to me, or what I think he is said to me.” In the context of the interview as a whole the defendant puts his case clearly on a number of occasions. In context there can be no doubt that his answer on page 65 is in relation to his response to the allegation he was saying had been made by Mr Ferdinand. Overall I assess his evidence as appropriately consistent and, with the possible exception of the answer on page 65, where there are minor inconsistencies they are of no significance.

I will mention briefly the evidence of Mr Cole. He is a friend and teammate of the defendant. He says he is also a friend of Mr Ferdinand and more especially Mr Ferdinand’s brother. Although he was courteous to the court, he clearly would have preferred not to be here. He was more tentative in his evidence than the other witnesses. Nevertheless, he did confirm Mr Terry’s own evidence that he had been told during the final minutes of the game that Mr Ferdinand had accused him of racial abuse. He also gives evidence of what he thought he saw Mr Ferdinand say at the

crucial time. He didn't hear the words spoken but saw them. There was a word that looked like Bridges or black. There was another word that looked like cunt (and indeed this was a word Mr Ferdinand agreed he used on a number of occasions). This evidence later enabled the defence to argue that there may have been a misunderstanding about the words used by Mr Ferdinand. Mr Cole also gave evidence about what happened later in the dressing room, and I will discuss the effect of the dressing room evidence later.

There is then the fact that on the evening of the match, 23rd October 2011, Mr Terry made a press statement. I have not been told what was in that statement, save that it contains the basic defence in this case, namely that he was responding to something said to him (in the prosecution bundle there is a copy of a report in *The Daily Telegraph* the following day). I do think this is an important point. Mr Terry tells me that he was advised to wait until all the television footage was available before making a statement. I am satisfied he is likely to have received that advice. A cautious adviser would not have wanted a client to be tied to an account that could later be controverted by other evidence. Mr Penny is right to put the question that it is important in a PR world to meet a high profile allegation with an immediate response. However it is a high risk strategy if there is a possibility that contradictory evidence will later appear. We know, as Mr Terry will have known, that there would be a number of recordings of the match from different angles. Overall, the fact that he made an immediate statement, and has maintained that account in detail and co-operatively throughout this process, without significant contradiction to his evidence, is undoubtedly a factor in favour of the defence.

What happened in the dressing room? It is agreed that John Terry summonsed Anton Ferdinand to the Chelsea changing room and that there was a conversation between them that also involved Ashley Cole. The prosecution rely on this incident as evidence that the defendant realised there might be trouble about his comments, and took the opportunity to

“square” Anton Ferdinand. The defence on the other hand say the incident showed that Mr Terry had been angered by the allegation on the pitch and wanted to confront it as soon as practicable after the match. There are different accounts of the words used. This is not in the least surprising, even if all three witnesses are doing their best to recall accurately what was said. It is an everyday experience, familiar to all of us but perhaps particularly to those who practise in the criminal courts, that even the best and most accurate witness is unable to recall a conversation with complete accuracy, even shortly after it has occurred. Usually people remember the general content of a conversation, but not the exact words spoken or the exact sequence of the words. All that is clear about this incident is that Mr Terry wanted to see and speak to Mr Ferdinand. They had a conversation about what was said on the pitch. Mr Ferdinand denied that he had heard any racial abuse or made any allegation of racial abuse.

There is evidence from Mr Cooper that clips of the incident were first posted online on YouTube on 23rd October. At one stage it appeared to be the Crown’s case that Mr Terry would have known of the YouTube footage before seeing Mr Ferdinand, and that this was the reason for asking to see him. Although timings for the material on YouTube have been provided, I cannot conclude that Mr Terry would have had the opportunity to see or hear of that material before he asked to see Mr Ferdinand. There is no evidence as to exactly when it was first viewed. Certainly Mr Ferdinand, and one assumes the QPR team, had not seen it by the time of the dressing room conversation. The evidence of the coach driver casts doubt on whether there was sufficient time between the clip becoming “viral” and Mr Terry boarding the coach for the defendant to summons Mr Ferdinand and for the conversation to take place. Mr Ferdinand’s own evidence about the time of the dressing room conversation is just an estimate, may be wrong, and carries significantly less weight than the evidence of the coach driver, David Richardson, who has gone back to tachograph evidence to give him the exact time that the coach left the ground. Mr Cole cast doubt on whether electronic devices can even pick up a signal in the away dressing room and certainly there is no evidence that they can.

There are a number of possible alternatives for what was said in the dressing room, and the reasons for the conversation. One explanation is that Mr Terry realised that what happened on the pitch could cause him serious difficulties. He wanted to head that off by a conversation with Mr Ferdinand. Mr Ferdinand either was or wasn't aware of the comment, either from him or from Mr Terry. Either way he did not want to make anything of it and wanted to put the incident behind him. This seems to be the most plausible account of what happened, but it is not an account given by any of the parties and, as I have said, there are a number of other possible alternatives. On the evidence I have heard from the three witnesses I cannot say, even on the balance of probabilities, what happened and what was said. In short the dressing room evidence is largely neutral.

Conclusion

The prosecution has presented a strong case. There is no doubt that John Terry uttered the words "fucking black cunt" at Anton Ferdinand. When he did so he was angry. Mr Ferdinand says that he did not precipitate this comment by himself accusing Mr Terry of calling him a black cunt.

Even with all the help the court has received from television footage, expert lip readers, witnesses and indeed counsel, it is impossible to be sure exactly what were the words spoken by Mr Terry at the relevant time. It is impossible to be sure exactly what was said to him at the relevant time by Mr Ferdinand.

It is not only that all of this happened in a matter of seconds. For a small part of the relevant time the camera's view of Mr Terry was obstructed. We do not have a clear camera view of Mr Ferdinand, sufficient to pick up exactly what he said. No matter how serious the incident looks now, and how crucial the exact wording is now, at the time it was secondary to the key witnesses. They are professional footballers in the final minutes of a

game where the result mattered to them both. They would naturally concentrate on the game more than on exactly what had been said to them or by them. There was the noise of the crowd. There is the fact that towards the end of a game players are not only physically tired (as Mr Carter-Stephenson pointed out) they are also mentally tired. I don't need evidence to tell me that.

It is a crucial fact that nobody has given evidence that they heard what Mr Terry said or more importantly how he said it. He has given effectively the same account throughout. Insofar as there are discrepancies in his account, they are understandable and natural. He says that he was himself wrongly accused by Mr Ferdinand on the pitch of calling him a black cunt. He has maintained that from the beginning. Mr Ashley Cole has corroborated that it was mentioned to him during the game. There is no doubt that reasonably soon after the game he made the accusation to Mr Ferdinand. He confirmed that basic account in a statement on the evening of the match. He gave a very detailed account to the FA and later to the police. He gave evidence to that effect in this court. There have been minor discrepancies in the account. It seems likely that his belief that he was wrongly accused on the pitch has strengthened as time goes by, and I have discussed that above. However, his account has been subject to the most searching and thorough questioning on at least three occasions. Nobody has been able to show that he is lying. The lip readers do not provide evidence that categorically contradicts his account. What may at first sight have seemed clear to the non-expert, is less clear now. There are limitations to lip reading, even by an expert. I have assessed John Terry as a credible witness.

Weighing all the evidence together, I think it is highly unlikely that Mr Ferdinand accused Mr Terry on the pitch of calling him a black cunt. However I accept that it is possible that Mr Terry believed at the time, and believes now, that such an accusation was made. The prosecution evidence as to what was said by Mr Ferdinand at this point is not strong. Mr Cole gives corroborating (although far from compelling corroborating) evidence

on this point. It is therefore possible that what he said was not intended as an insult, but rather as a challenge to what he believed had been said to him.

In those circumstances, there being a doubt, the only verdict the court can record is one of not guilty.

Howard Riddle
Senior District Judge (Chief Magistrate)
13 July 2012