THE ELEMENT OF INTENT

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A look at the Twitter storm following the verdict in R -v- John Terry

Anyone who follows me on Twitter knows that on occasion I have a tendency to ignore the 140 character limit and to go on somewhat long-winded arduous rants about all manner of things that have particularly irritated me. Thursday was no exception following the verdict in the much publicised John Terry trial. Now you may think that I became particularly irate on Thursday because I, like many others on Twitter, was annoyed that the Chief Magistrate, Senior District Judge Howard Riddle, didn't enter Westminster Magistrates Court with a black cap upon his wig and promptly declare John Terry be sent to the gallows post-haste.[1] In fact my annoyance stemmed from completely the opposite. It actually annoyed me that no one could apparently see that the decision to find John Terry not guilty was in fact the correct one.

Now before you scroll down to leave comments of derision, or suggest that I'm supporting racism or anything as absurd as that, let me be honest and frank with you: I'm not a John Terry fan. Stand next to me in Block 5 at The Emirates Stadium when Chelsea come to visit and that will be made abundantly obvious to all and sundry. Furthermore, let me be clear that I abhor racism or discrimination in any shape or form. It is a blight upon society as a whole and not just within football. But that doesn't mean I shouldn't point out the fact that Terry should not have been convicted of the alleged crime based upon the evidence offered by the Crown.

[1] Before my Learned Friends at the Criminal Bar point out the factual and historical inaccuracies of a Magistrate passing a sentence of death upon a Defendant I am merely commenting on the various Twitter reactions.

I should point out at this stage that I am not an expert in criminal law. There are far more knowledgeable people on Twitter who specialise or have an even keener interest in this particular field. I'd suggest the venerable Mr David Allen Green (@davidallengreen) for more detailed musings and tweets on issues such as John Terry or the recent Twitter Joke Trial. For my part I just happen to have enjoyed criminal law during my legal studies and have tried to keep up to date with this area of law ever since.

John Terry faced one allegation. That on the 23rd October 2011 at Loftus Road Stadium London, 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 issue that had to be decided was whether Mr Terry uttered the words “fucking black c***” by way of insult. If he did then the offence is made out, regardless of what may have motivated him. Intent was therefore the key issue in this case. Did Terry intend to cause offence with what he said? Perhaps it was unsurprising then (no doubt with the video evidence available to the prosecution) that Terry admitted saying the above but that he was merely repeating what he had heard in a sarcastic manner. As far fetched as that may sound to some it was up to the prosecution to prove their case beyond reasonable doubt.

A full copy of the Court's judgment can be found here; http://www.judiciary.gov.uk/media/judgments/2012/r-v-john-terry-judgment. Chief Magistrate Riddle in his judgment said the following:

'*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. 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 c***.*

'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.

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

Needless to say, when the verdict was read out and subsequently reported/tweeted by journalists in the courtroom, the whole of Twitter seemed to erupt with tweets of derision for the Courts, the Government, and the legal profession as a whole. Nobody seemed to realise, or perhaps didn't want to accept, that the important element of intent had not been proven by the prosecution and that therefore the legally correct result was reached. Whether or not the correct equitable or moral decision was reached is perhaps another matter and not the subject of this article.

Many pointed vigorously to the Suárez case and his fine of £40,000 and 8 match ban as a comparison. Well the truth is that they are two completely different cases. To begin with Suárez was not convicted of a criminal offence in a Criminal Court. He was censored by the FA in the equivalent of a civil case where the burden of proof is essentially much lower than that of a criminal proceeding. In a civil matter it must be proved that on the 'balance of probabilities' the Defendant did what it was alleged. In other words is it more probable than not that he committed the offence. In a criminal trial, the prosecution must prove 'beyond reasonable doubt' that the Defendant is guilty of the crime. This is a much higher burden of proof. Furthermore, experts were provided in Suárez's case that disputed his defence that calling Evra a "negro" was meant as a term of endearment and the FA upheld their charge against Luis Suárez regarding misconduct contrary to FA Rule E3. In the Terry case the lip reading expert could only provide evidence as to what was said but not how it was said or what the intent was contrary to section 28 of the Crime and Disorder Act 1998, and 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 comparison between the two cases is therefore pretty useless.

I was also quite surprised by the number of Twitter users condemning the defence lawyers who represented John Terry and complaining that only those with the means to purchase expensive lawyers "get off." Of course the irony is that many of the same people were quite amused by the performance of Terry's Barrister, Mr George Carter-Stephenson QC, when questioning the lip reading expert's evidence in Court. They believed that suggesting lip reading was not an exact science to the prosecution expert, Susan Whitewood, who was deaf but could understand him perfectly, was making him look a bit of a fool. In truth, having read the updates from Court by various journalists and their subsequent articles in the papers, I do not think that Mr Carter-Stephenson QC performed any better than any other Barrister would have under the circumstances. That is not to diminish his ability as a Barrister. He has a fine reputation in legal circles and it is unlikely Terry would have retained him as Counsel if he was not more than capable, and he is after all a QC. But this was not a complex fraud or murder case, and he didn't pull a "Hail Mary" or pull a rabbit out of his proverbial hat that ended up saving Terry's bacon at the eleventh hour. He just did what any decent lawyer would have done in the same situation.

If you were to take a poll of all criminal defence solicitors or barristers in the country, or indeed the wider international community, and ask them why it is that they do their job, I'm sure the vast majority would tell you that they don't do it to get the guilty off. Far from it, they do it to protect the innocent. They fight every case to their absolute ability to ensure that the Crown cannot take shortcuts with the evidence or the law. They ensure that the prosecution prove their case beyond all reasonable doubt. Yes, that may mean that occasionally guilty people walk free. But is it not far better that a guilty person goes free rather than an innocent person is convicted of a crime that they did not commit because shortcuts were taken by the Crown?

So in essence what "the high priced gun for hire" Mr Carter-Stephenson QC did on Thursday was to actually ensure that the right to a fair trial for future Defendants in a case such as Terry's are not infringed. Now that may sound a little bit romanticised but when you strip away everything else it is in fact the truth of the matter.

Others on Twitter questioned what was the point in bringing the case in the first place when the punishment was so small in comparison to Terry's wealth? What was the point in the Crown

Prosecution Service wasting all that public money when they didn't get a conviction? Well, every Defendant is innocent until proven guilty. Furthermore, the punishment should always be proportionate to the crime and not based on a Defendant's wealth or standing. I could write another article on the principles of punishment in the justice system but I'll try and stay on point and merely say that there would have been a huge uproar if a famous footballer had not been prosecuted when Joe Bloggs would have been. It should not be one rule for the rich and famous and another for the rest of society. Clearly there was a case to answer and I applaud the Crown Prosecution Service for putting on a strong case under such public scrutiny even if the end result was not as they might have hoped for.

I do hope the above has helped explain why the verdict that was reached was in fact for the best and has in part helped to dispel many of the myths and misconceptions floating around Twitter and the blogosphere. By all means don't take my word for it. As I said at the beginning of this piece there are plenty of experts willing to give their opinions and I would encourage all of you to seek them out.

Many will still believe that John Terry is guilty. Maybe he is. Maybe he did get away with it. I do not know and would not presume to know better than Senior District Judge Riddle. Perhaps one day I will be in his position but until then I shall defer to his better judgment and experience. Still, for the rest of you reading this it is important to remember that the offence John Terry was alleged to have committed could not be proven in a Court of Law because all the evidence was just not there in the end. His reputation has nonetheless been tarnished and I'm sure he will be reminded of this particular period of his life from various terraces across the country for many seasons to come by those inclined to do so. That being said we should all remember he was found not guilty. The correct result in my opinion.

Justice has been seen to be done.