Britain: judge halts high profile trial of Leeds footballers

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The high profile trial of two Premier League footballers and their friends ended suddenly on Monday, when trial judge, Justice David Poole, dismissed the jury on the grounds that a *Sunday Mirror* article the previous day created a "substantial risk" of prejudicing their verdict. The *Sunday Mirror* and its editor Colin Myler, who resigned Thursday, now face contempt of court proceedings. Penalties include an unlimited fine, sequestration of property and/or two years imprisonment.

Leeds United players Lee Bowyer (24) and Jonathan Woodgate (21), and friends Neale Caveney (21) and Paul Clifford (21), had pleaded not guilty to affray and grievous bodily harm with intent regarding an attack on Asian student, Sarfraz Najeib (20). A retrial has been set for October 8 before a new jury.

Sarfraz Najeib, of Rotherham, South Yorkshire, suffered serious injuries including a broken leg and fractured cheekbone in an attack outside the Majestyk nightclub in Leeds on January 12 last year. His elder brother Shahzad received minor facial and chest injuries and suffers recurrent psychological problems.

After hearing eight weeks of evidence Woodgate, Clifford, Caveney and another Leeds United player, Michael Duberry, were last week cleared of conspiracy to pervert the course of justice by the jury of seven men and four women. But, after 21 hours of deliberation, the jury had yet to return a verdict on the affray charges when they were dismissed.

In court several eyewitnesses had described seeing the players and their friends hopelessly drunk outside the nightclub, just after midnight. Woodgate admitted drinking seven or eight vodka mixers and a Bacardi Breezer, during an evening spent visiting various pubs and a lap-dancing bar, while Bowyer said he had been drinking since the afternoon. There was agreement that a fracas had developed outside the nightclub, after one of Sarfaz's group ridiculed the drunken antics of James Hewison, one of Woodgate's friends.

Moments later the students from Leeds University were chased through the town centre, before Sarfraz was knocked unconscious, punched, kicked, stamped on and bitten by his attackers as he lay helpless on the ground. A barmaid described witnessing the attack on Sarfraz. "He was just lying there. They were kicking him in the head and he wasn't moving ... it was a really horrific sight. I saw a guy was kneeling ... his head was shaking from side to side and he looked as if he was taking a bite out of him ... like a dog would."

The four accused denied taking part in the attack. Woodgate and Bowyer admitted setting off on the chase, but both claimed to have tripped and fallen on their way. Defence lawyers denied that CCTV footage showing Bowyer and Caveney embracing moments after the attack on Sarfraz was a "victory" celebration. Bowyer claimed that a trace of Shahzad Najeib's blood found on his leather jacket was probably the result of his unwitting contact with the real assailant.

The trial had already caused a sensation when Duberry, the only black defendant amongst the accused, decided to give evidence against his teammates. Duberry was not accused of taking part in the assault, but of helping to cover up the involvement of others afterwards—a charge he denied.

Duberry admitted in court that he had initially lied to police and had stuck to his false story on the advice of his then solicitor, Leeds United director Peter McCormick. Telling the jury that he had decided "to tell the truth—to tell it like it is", Duberry described meeting Woodgate in the city centre shortly after the attack. His teammate confessed that he and some friends "had just had a fight with some Asians" and that one of them, Paul Clifford, had bitten the victim, Duberry said.

His evidence not only flatly contradicted the testimony of the other defendants, it implicated the top echelons of the football club in a conspiracy to mislead the court. Afterwards the Law Society said it would study transcripts of the trial before deciding whether to investigate McCormick. The Leeds United director has so far refused to comment.

If Duberry's account is true, the reason for McCormick's advice is not hard to find. Guilty verdicts against three of its top players would prove extremely costly for the club, financially and professionally. Bowyer had set a British record in transfer fees for a teenage player when he was signed to Leeds for £2.6 million in 1996. Woodgate has been with Leeds since he signed at the age of 13 as a schoolboy player. Durberry had signed for the club in July 1999 for £4.5 million. Hackworth had also been taken on as a trainee at Leeds in July 1996.

Such was the club's profile that any football fan was automatically removed from the first jury pool and the proceedings had been moved from Sheffield to Hull because of the risk of prejudice.

The trial was also potentially damaging for the England football team—of which Bowyer and Woodgate are considered two of its most promising players. Hackworth has also played for England as an under-16 international and made his first-team debut in a Champions' League game against Barcelona. Although Bowyer had been allowed to continue playing for Leeds throughout the trial, the Football Association had said the players could not be considered for selection to the national side until the end of the trial. Woodgate and Bowyer will now almost certainly miss the rest of England's World Cup qualifying campaign, which winds up in October.

Leeds and England football clubs have a reputation for racist hooliganism amongst some of their fans, which they have been desperate to shake off. That two star players were accused of attacking Asian youth was therefore particularly sensitive.

The trial had originally been delayed by lengthy legal arguments from defence lawyers that their clients could not get a fair trial because the police had initially said they were investigating the attack as a racist incident. Although the crown prosecution service (CPS) had ruled out racism as a motive, their client's reputations had already been tarnished, the defence argued in a session sitting without the jurors.

Rejecting these arguments, Justice Poole did go to great lengths to insist with jurors that there was "absolutely no evidence of a racial motive" in the attack on Sarfraz. In his summing up, the judge had instructed the jury

to ignore speculation about the involvement of high profile race relations' lawyer Imran Khan in the prosecution case, and rumours about media background investigations of the two footballers. "We live in a time and society where there is a particular sensitivity to racism and race," said Justice Poole. "But you should know that the prosecution in this case has stated publicly in a pre-trial hearing that it does not suggest there was any racist motive. Nor indeed is there any evidence that there was such a motive."

Nevertheless, the issue of racism hung around the case like a bad smell.

On Sunday April 8, the *Sunday Mirror* ran an interview with Sarfraz's father, Muhammad Najeib. Under the headline “I wish I had fled Britain when I was battered by racists”, Muhammad referred to a racist attack on himself and suggested that the assault on his son was also racially motivated.

On Monday, after several jurors admitted having seen the two-page interview, Justice Poole said such allegations made in a "mass circulation newspaper published yesterday within three days of the jury's retirement... carries with it a substantial risk of prejudice" and would make any verdict unsafe.

The "highly emotive" interview had resurrected issues of racism, Poole argued. "It is, to put it mildly, not at all desirable that a crime and therefore a suspect, should be labeled racist when it is the prosecution submission they are no such thing... Can I make it as clear as I can, though I suspect there are some who will just not listen: that was not based on some conclusion I made. It was reached by the prosecution after a painstaking analysis of the evidence and publicly announced by them in September last year.

"It seems it is a conclusion unwelcome in *certain quarters where evidence is less important than preconception"* [emphasis added].

The judge's summation raises important issues.

It is noteworthy for its open attack on current government policy. Justice Poole specifically criticised a key recommendation of the Macpherson Inquiry into the racist killing of black teenager Stephen Lawrence in 1993 and the bungled police investigation that had failed to bring anyone to justice for the murder. The Inquiry, convened by the Blair government, found "institutionalised racism" within the police force was responsible for the failure of the criminal investigation and for causing widespread mistrust amongst black workers and youth towards the force.

In his report, Sir William Macpherson suggested that current police guidelines should be changed. Instead of defining a racial incident as one "in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation, or any incident which includes an allegation of racial motivation made by any person", it should now be "any incident which is perceived to be racist by the victim or any other person".

In court on Monday, Justice Poole complained at this "entirely subjective" definition, which had been universally adopted "in good faith" by the police. "The risk of police using that definition in their investigations in the absence of evidence has the potential for causing serious mischief and ought to be reconsidered," Poole said.

Just what was Justice Poole complaining about? In an interview with the *Guardian* newspaper on Tuesday, Macpherson angrily defended his recommendation. It was clear from evidence presented in the Inquiry that there was great dissatisfaction and unease towards the police "in these [minority] communities, and that people were very distressed with the way the police were dealing with allegations of racial crime. It was too easy for the police to say there was no racial involvement, and that victims had invented it", he said.

Macpherson therefore proposed the police should not be allowed to determine what constitutes a racial incident prior to an investigation. Given the widespread resentment that had developed against the police described by Macpherson, making such a change was the very least that the Labour government could have done.

Contrary to Justice Poole's allegation that this implies "evidence is less important than preconception", the change only involved the conduct of a police investigation. Should no evidence be found of a racial motive, one would not be alleged at trial, as was the case in the trial of the Leeds footballers.

Since motive can play a significant role in establishing if, why and how a crime was committed, Justice Poole's criticism does not stand up. Should it be alleged, for example, that a murder had been committed because of the victim's adultery, evidence to support or disprove the latter would be considered vital to any criminal investigation.

What Justice Poole is really objecting to is the perceived diminution of police control over investigative procedures. His criticisms echo previous attacks made by right wing sections of the establishment on the Macpherson Inquiry and the Blair government for kowtowing to "political correctness" and undermining police authority.

In this context, Poole's decision to abandon the trial amounts to a political display of his disquiet and resentment at the changes that have been made.

That is not to suggest that the judge's actions have no legal basis. The English law of contempt of court concerns the publication of any material that might influence a jury's deliberations. How that may be determined is extremely difficult to tie down. The 1981 Contempt of Court Act specifies that a person could be found guilty of contempt, even if there was no intent to cause prejudice or impediment to proceedings.

Contempt proceedings have caused a number of prominent trials to collapse, convictions to be overturned and led to newspaper editors being fined or jailed. The last editor to be imprisoned was Silvester Bolam, of the *Daily Mirror*, for three months in 1949 over a report on the arrest of the notorious acid-bath murderer John George Haigh, headlined "Vampire—Man Held".

Whilst expressing its regret at events, the *Sunday Mirror* has denied that its article was prejudicial. It points out that text at the beginning of the interview stated that the trial judge had "given a clear direction that there was 'absolutely no evidence of a racial motive'".

The Attorney General will now decide if contempt proceedings should be initiated against the newspaper and its former editor. Whilst imprisonment is extremely unlikely, prices for the Trinity Mirror's shares fell three percent on the London Stock Exchange on Tuesday, amid fears that a fine could seriously damage the struggling newspaper.

The *Sunday Mirror* has few defenders, even amongst other newspaper editors. It has been widely condemned for its decision to publish the interview. The Najeib family is reported to have lodged a complaint about the newspaper's tactics with the Press Complaints Commission, stating that Mr Najeib had a written undertaking from the newspaper that the article would not be published until after the trial.

The laws of contempt have been defended on the grounds that they ensure that the principle "innocent until proven guilty" is not thwarted by unfavourable or biased press coverage, and to preserve "the integrity of the legal process".

There has been criticism that the practice of sequestrating jurors in high profile cases has largely been abandoned on cost grounds, leading to such costly fiasco's as the trial in Hull (estimated to have cost £10 million) being abandoned without a verdict.

Whatever the validity of this charge, it is not the fundamental issue. There is no legitimate argument for media censorship. The claim that this ensures that, unlike the US, big money or the best PR does not determine a trial's outcome is false. Everyone knows that those with the "right" connections and able to afford the best lawyers enter a courtroom with a significant advantage over other defendants.

Adverse publicity does not automatically cause the abandonment of a trial. A case in point was the trial of 11 year olds Robert Thompson and

Jon Venables —found guilty of the murder of two-year old James Bulger in 1993. Media coverage at the time was far more prejudicial and savage than anything written on the Leeds footballers, Indeed in 1999 the European court of Human Rights ruled that the children's trial had been "unfair". At the time, however, far from halting proceedings, the trial judge displayed some sympathy with the press coverage—describing the boys as "evil" and directing the jury to find them guilty of murder.

In truth, prejudicial reporting only becomes an issue when the judiciary objects. The rules of contempt are entirely subjectively applied. As some commentators have pointed out, the *Sunday Mirror* article did not even refer to the guilt or innocence of those accused, but concerned a matter of opinion that the trial judge had already ruled was not at issue in the juror's considerations.

There is a high price for suppressing freedom of speech. The instances of innocent people railroaded to jail through frame-up trials are numerous. Virtually every month a new case is uncovered, in which jurors were presented with damaged, selective or even completely manufactured "evidence". To allow the venality and general right wing bias of Britain's mass media to cloud this issue would be a grave mistake. Contempt laws have nothing to do with upholding democratic rights. They are aimed at preserving judicial authority over legal proceedings, so as to ensure that the judge alone is able to influence and direct the jury in its deliberations. As the Hull trial demonstrates, under English law the principle that an impartial and informed jury should arrive at a verdict reads, "providing they are guided by a higher authority".