IN THE CROWN COURT AT ISLEWORTH

CASE No: T20190982

THE KING

v.

Gail BRADBROOK

Ruling 14th July 2023

1. The Allegation

1.1 Dr Bradbrook is charged with an offence of criminal damage contrary to s.1(1) Criminal Damage Act 1971. The trial is due to start on 17th July 2023 and has been long delayed due to a combination of factors of which Covid and the covid backlogs are the principal.

1.2 The allegation is that on 15th October 2019 she used a hammer and bradawl to break a window at the Department for Transport (DfT). It is not disputed that she did break a structural glass window.

1.3 There is equally no dispute that at that time Dr Bradbrook held a leading role in Extinction Emergency, that on that day there were extensive Extinction Rebellion protests, or that before, she broke the window, she addressed the crowd on issues of climate change and HS2.

1.4 To be clear there is no issue with Dr Bradbrook's right to participate in that protest or address those assembled. Further this prosecution does not address her decision to climb onto the DfT building. The prosecution is focused on the allegation that she then deliberately broke glass with a replacement cost of over £27,000. (I have seen other figures but they are all substantial.)

1.5 I am grateful for the courteous and constructive submissions of Dr Bradbrook during our hearing. She has presented her position very clearly. For today Dr Bradbrook has been assisted by a McKensie friend Toby Gale.

2. The issues

2.1 At present Dr Bradbrook is self-representing but she has been represented in parts of the proceedings, including for the submission of her defence statement. by solicitors. Her 75 page statement, and her submissions today, show that she is well aware of the developing case law relevant to allegations of criminal damage in the course of protest. I refer to it as the 75 page statement simply as an identifier.

2.2 I expect to direct a jury that:

In order to reach your verdict, whether it is Guilty or Not Guilty, you will have to ask yourselves if the prosecution have made you sure:

1. *That Dr Bradbrook damaged property;*

2. *That the property belonged to someone else;*

3. *That Dr Bradbrook intended to damage that property (that is to say it was not an accident)*

4. *That she did not have a lawful excuse.*

If you are sure of all of those elements your verdict will be guilty, If you are not sure it will be not guilty.

2.3 I do not expect the first three elements to be in dispute.

2.4 As to the fourth, lawful excuse, I will consider the issues raised below.

3. My task

3.1 I have obligations under the CrimPR to manage the case and, where appropriate, to timetable it. That involves identifying the real issues and ensuring that evidence is presented in the shortest and clearest way. Where there are disputes as to the admissibility of evidence, I have to decide those in accordance with legal principles.

3.2 In doing so I have regard to the overriding objective set by the CrimPR and the elements set out in those rules. This case has been given a time estimate of 5 days which is proportionate, even generous, to the issue at hand, and our focus is a criminal trial on an allegation of Criminal Damage and not an enquiry into the ills of the world. A court cannot and must not attempt to arbitrate on the merits of a protest.

3.3 One basic principle of admissibility is that evidence or submissions must be relevant to an issue in the case. If that is in dispute it is a matter for me to resolve.

3.4 For that reason, I required, as I am entitled to do, clarity as to the issues that Dr Bradbrook sought to raise.

3.5 After arrest Dr Bradbrook provided a lengthy explanation, perhaps better described as a statement of belief, in police interview (pJ19). She has submitted a Defence Statement, with addendum, and a lengthy 75 page document setting out what she wishes to say to the jury.

3.6 The defence statement uploaded 20th March 2020 broadly seeks to assert a number of defences including a freedom of expression defence (ie that it is not proportionate to prosecute); a prevention of crime defence, and a necessity/duress of circumstances defence. It also argues that the state of the law is such that there is a lack of legal remedies, but I do not identify that as a defence.

3.7 The Addendum filed 22nd February 2023, again by solicitors, asserts, without any particularity a range of defences. They are the defence of necessity/protection of

property with an added assertion that Dr Bradbrook had lawful excuse on the basis that the DfT would have consented had they been fully aware of the imminent danger caused by climate change, and asserts that her actions were reasonable and proportionate, and necessary to prevent greater danger and crime.

3.8 The 75 page document is very wide ranging and I must refer to the document itself for its detail. I am grateful to Dr Bradbrook for setting matters out in that way so that we can review what is and is not permissible to advance to a jury.

3.9 Whilst it is phrased as if a speech I take it to be what she would seek to say if she chooses to give evidence. In general any closing submissions must be founded on matters that are in evidence before the jury. It does not appear that the circumstances will arise in which Dr Bradbrook would be entitled to make an opening statement but that I will review if need be.

3.10 The document contains multiple quotations and references. It also incorporates a statement from Tim Crossland and Jonathan Fuller who Dr Bradbrook seeks to call as an expert opinion witness. The document therefore potentially raises many individual questions about admissibility. But the rule remains that any evidence must be put before the jury in accordance with the rules before it can be the subject of comment in a speech. Dr Bradbrook has been aware throughout that those rules apply to her.

3.11 I comment that, as with the statement to the police, the 75 page document surveys a substantial number of issues but there is a marked lack of focus on how the act of breaking the glass is directly related to calling attention to those ills, but, of course she argues that her action was to draw attention to the wider issues and so the precise nature of it is not the point. She argues to me that, for instance, filmmakers have included footage of her act in films on the topic, or that journalists sympathetic to her cause have said that they need actions such as this in order to maintain public interest and has spoken of her conviction that there are many persons in institutions or commercial organisations supportive of her actions. She also seeks to contrast the prosecution of climate protesters against the non-prosecution of climate offenders or to contrast her action in breaking a window with limited investigations where windows are broken in the course of burglary.

3.12 Dr Bradbrook has also served the statements of the potential expert witnesses, Tim Crossland and Jonathan Fuller; some statements of persons who speak of conversations with persons associated with high-street banks, and some character statements and those I shall consider below. For some reason they have been uploaded to the Prosecution witness section. I would not encourage that, but it presents no difficulties in this case.

4. Legal principles

4.1 I acknowledge that the law has developed over recent years as specific issues raised in protest cases have been considered by the higher courts by which I am bound.

4.2 If a defendant seeks to put before a jury a defence that no jury properly directed could accept then the judge has a duty to withdraw that defence from the jury.

4.3 I proceed on the basis that I must be cautious not to substitute any view I may have (such views being of no relevance) for a decision within the responsibility of the jury, but only contemplate withdrawal if a proffered reason is incapable in law of amounting to a defence, or if as a matter of law, no jury could accept it.

4.4 There is no place for a judge withdrawing a defence because of any perception that a jury may be inclined to sympathy and so stretch the bounds of the defence in law. If the defence is potentially open then it is for the judge to direct the jury on the law, if appropriate, with robust and clear directions that they must decide the case on the law. That is as much so in protest cases as in any others.

4.5 Dr Bradbrook has referred to many of the recent cases in her 75 page document. Among the principle decisions are Zeigler, Thacker and AG's Reference No.1 of 2022. They have been previously considered by many, including myself. A detailed analysis is hardly required.

4.6 People have rights of freedom of expression, so, in our society people have rights to express themselves by way of protests. Under the law, if a person, as part of a protest, causes damage which is minor or temporary there may be a question that a jury has to decide whether it is proportionate to prosecute that person.

4.7 However, cases alleging criminal damage valued at over £5000 are tried in the Crown Court. The law is that where a person causes significant damage, they cannot claim that was a lawful exercise of their right to freedom of expression so as to have a lawful excuse. Significant damage certainly includes cases of damage valued at over £5,000 and we may have to consider evidence about what value of damage was caused in this case.

4.8 In the circumstances of this case it is not a defence for a person to say that breaking the window was lawful on the basis that she felt it was necessary to prevent some greater wrong, or in self-defence, or to prevent an alleged crime either by the UK government or the Department of Transport. That is the clear effect of the judgements of the higher courts. She correctly accepts that it is not for me to re-write laws passed by Parliament or determined in decisions binding on me.

4.9 Dr Bradbrook, in her 75 page document, accepts that is the current state of the law, albeit that she deplores it. It is her position that the decisions that determine that prospective defences do not apply are founded on an assumption that there is a functioning democracy and legal system and she argues that there are neither. She argues that it is wrong that the law does not offer legal defences for her actions.

4.10 I adopt the words of Dickson J (in the context of a defence of duress of circumstance, in *R v Perka [1984] 13 DLR (4th) 1* (Supreme Court of Canada). said:

> *It is still my opinion that "no system of positive law can recognise any principle which would entitle a person to violate the law because on his view the law conflicted with some higher social value" [Morgentaler v The Queen [1985] 53 DLR (3d) 161. ...It would invite the courts to second-guess the legislature and to assess the relative merits of social policies underlying criminal prohibitions* [Quoted Blackstones A3.49]

4.11 Before coming to other matters there are two specific aspects of "lawful excuse" derived from s.5(2) of the Act that I should focus on. I have already addressed the other prospective defences above.

5. Lawful excuse due to consent

5.1 Dr Bradbrook has told me that she is not trying to argue that there is consent in the DfT.

5.2 By s.5(2) it is provided that a person is to be treated as having a lawful excuse

> *if at the time of the act or acts alleged to constitute the offence he believed that [the DfT] had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances;*

5.3 I suspect that there would be considerable complexities in identifying who would be in a position to give the DfT consent to such damage.

5.4 Making all allowance for s.5(3) that "*For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.*" a belief that the DfT would have consented had they been "*fully aware of the imminent danger caused by climate change*" is clearly outside the statutory criteria above, envisaging that if the DfT believed what Dr Bradbrook believes then they would have agreed to her breaking the window. Clearly Dr Bradbrook acknowledges that.

5.5 She has filed two statements about attitudes within banks which she says is illustrative of there being people throughout institutions and commercial organisations who support her campaigns. That is clearly wholly separate from what the DfT might consent to.

6. Protection of property

6.1 By the other limb of s.5(2) it is provided that a person is to be treated as having a lawful excuse

> *if he ... damaged ... the property in question ... in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—*
>
> > *(i)that the property, right or interest was in immediate need of protection; and*
> >
> > *(ii)that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.*

6.2 Again this issue has been reviewed in a number of authorities. Making all allowance for s.5(3) I do not perceive it as engaged by the issues that Dr Bradbrook seeks to raise.

7. Conclusions on Defences and consequences for admissibility

7.1 The terms of the arguments that Dr Bradbrook seeks to put forward are clear. The reality is that she agrees that the decisions of the higher courts mean that the defences she seeks to advance are not defences in law as it stands.

7.2 Dr Bradbrook therefore argues that she cannot have a fair trial and a jury cannot be expected to consider a wider context and/or what I shall call a Bushell acquittal unless they are informed of, to put it broadly, the content of her 75 page document, among other things setting out the context in which those defences have been shut out. She describes the prosecution argument that the contents of that document are not admissible as a "circular argument of power".

7.3 She also argues that she must be entitled to set out her opinions on the wider context not only so that the jury can consider whether to convict but, because she has been the subject of vilification and prejudicial attacks in the public domain she argues that she needs to have a voice in front of the jury to explain why she did what she did.

7.4 There are two issues here:

7.5 First, I must and will direct the jury about the elements of the offence and what does and does not constitute a defence in law. There is not a "wider context" defence nor does a wish to justify actions other than in lawful terms entitle a person to present material which would otherwise not be admissible.

7.6 Second, it is by no means uncommon for high profile persons to be tried in our courts. Proper steps can be taken to select a jury that can try the case according to the evidence and the legal direction that they are given, that is to say to be true to their oath. A questionnaire posing relevant questions will be formulated but primarily we rely on robust directions.

7.7 I conclude that this court must identify the issues which it is relevant for the jury to consider and direct the jury on the law as it stands. Dr Bradbrook is fully entitled to present evidence and argue her case where it is relevant to those issues and the law as it stands.

7.8 What she is not entitled to do is to present material which is not legally relevant to a legal defence purely because she wishes to them to know about it or as an invitation, spoken or unspoken, for the jury to disregard their affirmations or oaths.

7.9 There are many cases where there are matters, for example properly categorised as mitigation, that a defendant might wish the jury to know, but if they are not relevant to the issues the jury has to decide they are not admissible. The whole body of law on the admissibility of evidence is not disapplied in this case. I shall say more about Bushell's case below but that was not a case that determined that any defendant is entitled to put before a jury any evidence that they feel explains or excuses their actions. I find that Bushell's case and the ideas that flow from that do not provide a right to adduce evidence not relevant to the legal issues in the case.

7.10 My legal and case management duties require me to direct that such matters not be placed before the jury, and if necessary, to enforce that.

7.11 I say that not doubting the sincerity of Dr Bradbrook's beliefs and acknowledging that if a jury find her to be guilty of the offence then there are many

matters which are not relevant to the trial but would properly affect the sentencing process that would follow a guilty verdict.

7.12 There may be cases where there is no legal defence route available. That does not mean that an alternate route must be provided in order to achieve fairness. Equally I feel it is my duty to remind Dr Bradbrook that if she is guilty then a guilty plea does attract a reduction in sentence.

8. Bushell's case

8.1 We start with Dr Bradbrook's submission that this is not a usual case because the reasons why she acted involving a collapse of civilisation so that restrictions that would apply to the generality of cases in the Crown Court should be approached differently. She mentioned that she sees herself as a "conscientious protector", a concept not recognised by the law.

8.2 Dr Bradbrook emphasises the vital role that juries place in the maintenance of freedoms in society, and that a jury decision to acquit can identify a gap between public attitudes and the law.

8.3 Dr Bradbrook wishes to tell the jury, or better still have me direct the jury that, as set out in the 75 page statement,:

> *"Whether a defendant officially has a defence in current law or otherwise, it is still possible for a jury to acquit – so called jury nullification based on the right of jurors to act on their own conscience …It is important that jurors are told that they have this right. It is also important that jurors have all the relevant information to hand that might lead them to feel that nullification is appropriate".*

8.4 Thus Dr Bradbrook seeks to argue that there is a principle that regardless of the law and the facts she is entitled to tell the jury that they can acquit (as distinct from inviting them to acquit – a distinction without a difference).

8.5 Dr Bradbrook relies on the fact that there is a plaque at the Central Criminal Court referring back to Bushell's case and referring to "the right of juries to give their verdict according to their convictions" and that is a plaque that jurors at that court walk past in the public areas.

8.6 She also refers to the Auld Report which identified a tension (my word) that exists between the principle that juries must apply the law the judge directs to the facts as they find them to be Bushells case. That has not been the subject any change or law either to abolish the principles derived or to add an element to directions that judges should give to juries.

8.7 She has referred to past instances of celebrated trials where it appears that defendants were able to speak to a jury to invite them to acquit. I find that those were clearly cases where there were different charges, different issues and in a very different time so that ultimately I don't find that comparison helpful.

8.8 I agree that we are in a position where no legal defence appears to be available to Dr Bradbrook, The body of law to which I have already referred, on the ambit of defences to this charge is now clear. It is appropriate to observe that prominent

among those issues are the circumstances in which protest involving damage is protected by rights, principally the right of expression. In particular Zeigler and AG's Ref No.1 of 2022 consider the issue of whether prosecution is proportionate and when that issue should be left for the jury (or magistrates) to determine.

8.9 I conclude that Dr Bradbrook's position misunderstands Bushell's case and the other jurisprudence around it. I have read the report on Bushell's case and that jurisdiction. Fundamentally that case finds that the court cannot enquire into the reasoning of a jury and thus could not punish a juror or jury for reaching a verdict that appears to be contrary to the law and evidence. Certainly a judge cannot direct a verdict of guilty.

8.10 Whilst she claims to be a special case, Dr Bradbrook's argument would, if correct, import into every criminal case an additional, supervening, defence and that has never been the position.

8.11 The jury take an oath or affirmation to decide the case according to the evidence. They are required to apply the law that the judge sets out for them to the facts as they find them to be.

8.12 It would, of course, be absurd for a judge to direct a jury on the elements of the offence and the legal defences available for them to consider and then to tell them that they could disregard all that if for reasons of conscience they did not wish to convict.

8.13 It would be equally absurd for the judge to permit a defendant to seek to present wide ranging materials which are not, in fact, relevant to the legal issues in the case, to bolster the defendant's contention that even if there is no defence in law the jury should still acquit. That would be utterly incompatible with law on admissibility. A lawyer representing a client in the Crown Court would not be able to do that and Dr Bradbrook does not have any greater right because she is self-representing.

8.14 To adopt the reported words of Cavanagh J on this topic in referring to the Attorney General a possible contempt by persons holding placards outside ILCC:

> *It is not the case in any trial that jurors can acquit by their conscience if by that it is meant they can disregard evidence and directions given by the judge and decide on their own beliefs whether a defendant is guilty of a criminal offence. To do so would be a breach of their jury oath and cause injustices.*

8.15 It follows that for a defendant to seek to present such an argument to the jury or to support it by material not relevant to the issues in the case cannot be permitted and must not occur.

8.16 I make it plain that the defence case must be conducted in accordance with my legal ruling on this point. I would not wish to have to take steps to enforce it, let alone to do so in front of the jury.

8.17 It occurs to me that were there to be breaches then there <u>might</u> also arise a question whether that amounted to inference with the jury such that the prosecution might make an application under s.46 Criminal Justice Act 2003 for the discharge of the jury and the continuation of the trial by judge alone. It would be for the

prosecution to decide if to make such an application and I am not going to speculate about the circumstances that might trigger the application or be likely to result in an order being made.

8.18 I should also caution that the interference with jurors, for example as the arrive or leave the court building, is a serious contempt potentially punishable by imprisonment. I would hope that no-one, whether associated with Dr Bradbrook or not, would be tempted to such a course.

9. Prosecution witnesses to be called

9.1 The prosecution witnesses to be called were identified as PC Thompson, Micheal Perie, Gavin Buss, DC Dixon and DC Bailey. The OIC is DC Dixon.

9.2 Dr Bradbrook says that the only witness she would wish to cross examine is Gary Buss on the issue of the cost of repair. She understands the consequences of their not being required to attend.

9.3 Dr Bradbrook objects to Michael Perie speaking about safety if she is not going to be able to speak of her actions as being designed to keep people safe. If that is presented as an objection to admissibility then it can be considered but we are clear that is an issue of admissibility and if the statement is admissible it can be read.

9.4 The prosecution will seek to call Mr Buss on Tuesday 18th and DC Dixon. They also intend to call PC Thompson live

10. Status of Police Interview

10.1 There is a police interview (p.J19) which commences with a lengthy statement from Dr Bradbrook about her views and, later, when questions specific to defences are raised is largely “no comment”.

10.2 Dr Bradbrook wishes that interview to be played to the jury. She points out that it was proximate to the events and she feels that the reaction of the police officers dealing with the interview supports her position.

10.3 However I find that the reality is that Dr Bradbrook wishes to have her statement in police interview played as an alternate way of sharing her wider viewpoint.

10.4 The prosecution argue that anything in the interview that would otherwise be irrelevant or inadmissible does not become admissible because it was said in the interview. That is perhaps a statement of the obvious. I ask all to bear in mind that mere previous consistent statements are not usually admissible and I see no basis on which the views of the police officers would be admissible. Juries must act on evidence and not the opinion or apparent response of any individual police officer.

10.5 If that material is not relevant to an issue in the case so that she would not be permitted to say those same things to the jury in evidence, because they fail the test of relevance or for other reasons, then the interview has no special status permitting or requiring it to be played to the jury.

10.6 I am satisfied that this should be the subject for further discussion so that there is no prospect of the jury thinking she said nothing. A broad summary, with or without some section being played, will avoid that risk.

11. Witnesses

11.1 The Standard Witness table refers to possible defence witnesses Heydon Prowse and Tim Crosland.

11.2 I had not seen a statement from Heydon Prowse and I do not know what issue he would speak to. It is said that he was there at the time but, in any event and due to the delay, Dr Bradbrook no longer seeks to call him.

11.3 Tim Crosland appears to be an expert witness and I shall consider him below.

11.4 Dr Bradbrook has confirmed that, other than the witnesses I shall discuss below, there are no other witnesses that she would seek to call.

12. Hearsay Witnesses

12.1 pI56 is a statement from Chris Skinner referring to a conversation with an unnamed former vice-chairman of a well known high-street bank.

12.2 pI58 is a statement from Donnachadh McCarthy about a conversation with an un-named Head of Sustainability at a UK high-street bank.

12.3 First I caution that if she wishes to rely on that evidence before the jury then the witnesses will need to attend court to give evidence and be cross-examined UNLESS the prosecution agree that they can be read, whether in full or edited form. The prosecution position is that they do not agree them to be read as they argue that the material is inadmissible and irrelevant. The prosecution have confirmed that they would not object to them being introduced in mitigation in the event that Dr Bradbrook is convicted..

12.4 Second there is a question about the admissibility of the material. On the face of it this is being produced as evidence of the truth of the content of the statement made by the unnamed officials. That could not be admissible without a successful hearsay application.

12.5 If the statement of Chris Skinner is sought to be adduced as to whether Dr Bradbrook may have had a belief that there was some unspoken consent to her actions from the banking sector that has no relevance to damage to a government building nor is it specific to such damage. I cannot see any basis on which that is relevant to the real issues to be before the jury.

12.6 Where it is the fact of the statement being made, rather than the truth of its contents then evidence that was the reason that Dr Bradbrook may have believed that her actions had unspoken consent within the banking sector may not be hearsay but it must still pass the test of relevance and in these circumstances plainly does not.

12.7 I would add that there are many passages in the 75 page statement where she seeks to refer to what other people have said such as comments made by Greta Thunberg about what politicians have said to her. If they are being referred to for the

truth of their content then that is hearsay evidence and subject to the restrictions. In any event, and for the reasons set out above, I do not consider that such material is admissible on a trial.

13. Expert evidence

13.1 Dr Bradbrook has served statements from p.M5 Tim Crossland and pM1 Jonathan Fuller as apparent expert evidence.

13.2 Dr Bradbrook says that the essential point that Tim Crosland is that the government is lying to the public. Mr Fuller's argument is that people who are creating the policies destroying life on earth are not relevant.

13.3 It will be necessary to review whether their evidence is admissible. The first criteria is relevance to an issue in the case. The provisions of the CrimPR and CrimPD apply. CrimPD 7.1 provides:

> *Expert opinion evidence is admissible in criminal proceedings if, in summary:*
>
> 1. *it is relevant to a matter in issue in the proceedings;*
> 2. *it is needed to provide the court with information likely to be outside the court's own knowledge and experience;*
> 3. *the witness is competent to give that opinion; and*
> 4. *the expert opinion is sufficiently reliable to be admitted."*

13.4 The prosecution do not agree to those witnesses being read so if the evidence was to be adduced those witnesses would have to be called. The prosecution say that those statements are not relevant to a matter in issue in the proceedings. The prosecution also raise an issue whether they pass the hurdles of being expert evidence.

13.5 In any event I find that the evidence on those topics is not admissible for the reasons I have set out above.

Good and Bad Character evidence

13.6 There have been uploaded (curiously to the section of the DCS reserved for prosecution statements) statements from character witnesses. pI52 Professor Jeffrey Forshaw and I59 Dr Gerald Power;

13.7 The evidence from those witnesses would appear to be admissible if confined to general character issues however Dr Bradbrook said they are provided in case she is convicted and the court has to consider sentence.

13.8 I caution that if she wishes to present character evidence to the jury then the witnesses will need to attend court to give evidence and be cross-examined UNLESS the prosecution agree that they can be read, whether in full or edited form. In contrast if they are adduced for purposes of mitigation in the event of a guilty verdict I would take them into account for that purpose without need for them to attend.

13.9 There is a prosecution Bad Character notice (dated 13th February 2020) referring to events in November 2018. Dr Bradbrook does not recall having had a copy and there appears to have been no counter-notice. In any event she, understandably, argues that its contents are not bad character but confirm consistency of approach on her part.

13.10 I will hear argument about whether it should or should not be admitted, but if Dr Bradbrook seeks to rely on good character statements it is likely that it will be.

14. Jury Questionnaire

14.1 We have discussed the content of a questionnaire for the jury panel. I will develop my view on that over the weekend.

15. Jury directions

15.1 It is the task of a judge to give the jury direction when it will assist. I also have a responsibility to an unrepresented defendant to ensure that they are clear about the issues so that they can focus on the issues the jury has to determine.

15.2 I therefore intend to provide and read out written direction to the jury after the prosecution has completed the case opening. I shall also work on that over the weekend.

HHJ Edmunds KC – 14th July 2023