IN THE CROWN COURT AT ISLEWORTH

CASE No: T20190982

THE KING

v.

Gail BRADBROOK

Ruling 10th October 2023
Following hearing on 6th October 2023

1. Publication

1.1 This is a pre-trial ruling and so subject to the standard reporting restrictions set out in s.41 Criminal Procedure and Investigations Act 1996.

1.2 There is a separate s.4(2) Contempt of Court Act order (originally made 18th July and renewed on 19th July 2023) which provides that until the return of a verdict in the current case:

a. The publication of any report of the events taking place in the proceedings on 18th July 2022 save for the fact that the jury was discharged shall be postponed.

b. The publication of any report of the making of this order or its terms shall be postponed.

A person affected by that order including representatives of the media are entitled to make representations as to its continuance at any stage.

1.3 These restrictions are in place to protect the forthcoming trial, not least in the interests of Dr Bradbrook.

2. Pre-trial rulings under s.40 CPIA 1996

2.1 This judgement and my previous judgements contain pre-trial rulings made in accordance with s. 40 CPIA. S.40 provides that such rulings have binding effect from the time made until the case against the accused is disposed of. No application can be made to discharge or vary a pre-trial ruling unless there has been a material change of circumstances since the ruling, or previous application, was made.

2.2 I make this law clear because Dr Bradbrook's applications and submissions of 6th October do seem to me to be attempting to re-litigate issues already determined.

That will not stop me reviewing the merits in this instance but there must be an finality in the rulings made.

2.3 This judgement is somewhat longer than might otherwise be required. I do so in the hope that it can provide information, particularly the unrepresented defendant, that she might otherwise lack. I also do so because I fear that Dr Bradbrook does misinterpret my approach or impute to me intentions which are simply not there.

2.4 There has also been media and academic interest in this case.

3. Introduction

3.1 Dr Bradbrook is charged with an offence of criminal damage contrary to s.1(1) Criminal Damage Act 1971. 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. The cost of repair is put by the prosecution in excess of £27,000.

3.2 The case has been long delayed due to a combination of factors of which Covid and the covid backlogs are the principal but we have also awaited decisions from the Court of Appeal potentially relevant to issues in the case. Delay in any trial is very regrettable and that is no different in this case.

3.3 A trial commenced on 17th July 2023 and the jury was discharged on 18th July 2023 for the reasons stated in my oral ruling on that day. The following day, 19th July, I gave directions in order that parties could prepare for the re-trial due on 30th October 2023, and explained the need for those directions in the judgement of that day.

3.4 The case was listed on 6th October 2023 for a pre-trial review and, in particular, to focus on the way that the prosecution and defence cases were to be presented. Because of the particular circumstances and the events of the July trial I directed that the prosecution set out in writing exactly how they proposed to open the case and that the defendant set out in writing what she intended to say in evidence and in submissions to the jury.

3.5 Unfortunately the prosecution did not serve their proposed opening by 8th September as required. Miss Wilkinson has apologised saying it was missed and served the relevant document on 21st September, in fact in the same terms as she had opened the case in the July trial, and including the passages about which I had expressed concern.

3.6 In the meantime the defendant had submitted a document on 20th September rightly drawing attention to the prosecution failure but going on to say that in consequence the defendant was unable to file the materials required of her and going on to make applications that I should recuse myself from the case for bias and making further submissions about admissibility and how the forthcoming trial should be conducted. She did at the same time file a witness statement from Jonathan Fuller dated 28th August 2023.

3.7 Given the prosecution failure I do not criticise the defendant for not filing her own documents but, of course, she is very familiar with the prosecution case and the evidence that they rely on having been present when it was presented during the July

trial, and has had plenty of time to digest my rulings and take such advice as she wishes upon them.

3.8 If her application that I recuse myself is not successful then I will give her a further opportunity to comply not least because that process will ensure that Dr Bradbrook does not inadvertently breach my rulings.

4. Materials

4.1 In this judgement I shall not repeat the content of the Note on Self Representation provided to the defendant in April 2022, or my judgements of 14th. 18th July (oral) and 19th July 2023, but I adopt them.

4.2 Happily the prosecution were able to provide a transcript of the events of 18th July 2023 during the hearing on 6th October.

4.3 In addition I gave a homily and written directions to the jury at the commencement of the trial and I also provided in writing to Dr Bradbrook on the morning of 19th October a reminder of the restrictions upon her evidence and submissions that were derived from my earlier judgements and oral discussions. For convenience I append that written note to this judgement.

4.4 I say now that I find no reason to depart from the rulings made previously about the elements of the offence, the potential defences available under the applicable law, or the conclusions I reached as to admissibility. I have looked afresh at these matters but, quite apart from the technical restrictions on re-opening issues in s.40 CPIA 1996, Dr Bradbrook has not adduced arguments or authorities that would justify my so doing.

4.5 I shall say something more about the events of the first trial and about the use of Bushell's Case below.

5. Other litigation

5.1 We are all aware that there are other cases involving other defendants before the courts. In particular that the SG has commenced proceedings against Ms Warner, and the ruling of HHJ Reid at Inner London finding a contempt on the part of Ms Lewis and Ms Pritchard is under appeal. Neither side has suggested that my ruling on the issues before me should be further delayed. In any event I am satisfied that the issues in the case of Lewis and Pritchard are substantially different because the charges against them were of public nuisance by, as I understand it, blocking traffic for some two hours.

6. Role of a Judge where a defendant is not represented

6.1 A judge in a case with an unrepresented defendant has a duty to try to ensure that the defendant understands the rules that apply to all defendants, to advise where that defendant risks breaching them and to warn of the possible consequences of doing so. That is in the hope that such a defendant can avoid unwittingly straying into matters that would result in adverse consequences. An unrepresented defendant would rightly complain if such consequences were incurred without a prior warning.

6.2 The judge's role is to flag up issues and to point out rules, resources and the like but not to provide a comprehensive legal education or to act as lawyer for the defence.

6.3 In the particular circumstances of this case where there is little dispute about the base facts, and in the light of what happened during the July trial, I judged it to be necessary to make what were, I accept, unusual orders that both sides submit in writing what they proposed to say. That was in order that both sides, and particularly the defendant, could receive rulings on what was or was not permissible and so avoid inadvertently breaching rules with which she, being unrepresented, may be less familiar.

7. Introduction of erroneous or inadmissible material.

7.1 During a criminal trial it not infrequently occurs that one or other side says something about the facts or law that requires correction, or that something is said that, whilst not technically improper, requires balance in the interests of justice. Reading the transcript of events on 18th July reveals examples of my intervening to that end.

7.2 There may also be occasions during a trial when evidence that is not relevant to an issue, or otherwise inadmissible, is introduced for whatever reason. It is often the case that that difficulty can be overcome by a clear judicial direction to a jury that they should ignore it in reaching their conclusions, the focus being to try to keep the trial on track.

7.3 However where the process is so contaminated by improperly introduced material that the court finds that a fair trial is impossible and judicial directions to the jury will not suffice the jury must be discharged.

8. Generally

8.1 I start by saying that it is evident that Dr Bradbrook and I come at this case from different angles.

8.2 I perceive my task as requiring me to conduct a trial in accordance with the law including the rules of evidence which have legal effect. That means a trial in which the jury can soberly assess whether or not the prosecution can prove the elements of the charge of criminal damage to the criminal standard or not, fairly considering any defences that, in law, arise.

8.3 I have the obligation to direct the jury, including as to the elements of the offence and what defences need to be considered, or, where this arises, what would not amount to a defence.

8.4 Where issues of admissibility, including relevance, arise I have a duty to make rulings in accordance with the law and in the absence of the jury. At the margins they are often nuanced but they remain legal issues governed by the laws of evidence.

8.5 I reject the notion that in doing so I seek to interfere with the course of justice or to engineer a guilty verdict.

8.6 I make it plain that in no circumstances will a judge in England and Wales direct a jury to convict even if there appears to be no defence in law.

8.7 In short this is a criminal trial and the defendant is in no different position than any other criminal defendant.

8.8 Dr Bradbrook clearly sees matters differently. Indeed she shouted at the jury after they were discharged on 18th July 2023 "The legal system is enabling destruction of life on earth. The courts are now a site of civil resistance because some of us are compelled to tell the truth in these times"

8.9 She has, once again, confirmed that, given the state of the law and authorities, she does not identify a defence known to the law, saying (I summarise) "I do agree that the higher courts do not recognise a defence in law" but arguing that "there are cases where the parameters of the law are not sufficient to achieve a fairness [a fair trial] and the jury is the crown jewel to take care of these responsibilities". She said "that is why I intend to explain myself as a mother who will not be silenced by a system that does not know what it is to bring life into the world and care for the continuance of life".

8.10 In her oral submissions she put her complaint as being that I had applied narrow legalistic rulings disregarding a wider constitutional role which she argues should allow much wider parameters of admissibility. I conclude that her allegations of bias (save for a few complaints specific to my personal conduct of the July trial) do not present arguments that I was wrong in my legal decisions but rather that she thinks the law should be different. She says the constraints of the law are "politically motivated in the widest sense" and asks that I permit relevance to be determined according to her perception of common sense.

8.11 In her further submission of 29th September 2023 she says:

> *… I am a litigant in person who can make no sense of the direction that while on trial, with my liberty at stake, I am not permitted to explain why I did what I did.*

8.12 I have done my best to explain, and in particular to explain in writing, so that Dr Bradbrook can make sense of it, even if she does not agree with it. In criticising my rulings on admissibility and warnings, including issues of hearsay and expert evidence, and the risk that circumstances might arise that could result in a s.46 CJA 2003 direction that the trial continue by judge alone, and despite being repeatedly pointed to those matters, it is disappointing that even at the hearing of 6th October 2003 Dr Bradbrook had not chosen to read or inform herself about them, but instead to make wide ranging assertions based on her own view of what is fair or what is common sense.

8.13 However heartfelt her position that does not allow any judge to disapply the laws either on the substantive offence or on admissibility so that she can present material that she claims to be relevant but the law says is not. The law draws a clear distinction between the rights and wrongs of campaigning on important issues such as climate change, for which the courtroom is not the proper place, and specific question for the court whether it is a criminal offence to cause damage to the property of another to the tune of £27,000. It is that fundamental distinction that Dr Bradbrook

does not accept and a part of that, I suspect, is what I judge to be a continuing misunderstanding of Bushell's case to which I shall return.

8.14 As to my individual rulings these may be subject to review by the Court of Appeal. It is the privilege of anyone to disagree with my rulings but the fact that they disagree, or consider that the law should be different from what I determine that it is, does not amount to an argument in bias, let alone entitle them to disregard those rulings in the conduct of their case.

8.15 In addition Dr Bradbrook is persistent in claiming that she is being silenced or denied her voice. However she is not being restricted in any way from conveying her views to whatever wider audience she wishes. That does not mean that whatever views she wishes to offer become admissible in the specific context of a criminal trial limited to a specific alleged criminal act.

8.16 That is subject to one qualification – namely that Dr Bradbrook should be careful that conveying her views to a wider audience she does not focus on specifics relevant to this case that are intended to or risk contaminating the jury pool who will try her at the end of October 2023.

9. Recusal

9.1 I apply the well known test from **Porter v McGill [2002] 2 AC 357** by ascertaining the relevant circumstances, and then asking whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the tribunal was biased. Lord Hope described a "fair minded and informed observer" as one who is neither unduly sensitive or suspicious.

9.2 I will assume that such an informed observer has attended all the hearings and heard the rulings both oral and in writing.

9.3 I now turn to address the complaints made.

10. Reasons for discharge of the Jury in July 2023

10.1 Dr Bradbrook complains that my judgement on 19th July fails to mention other reasons that Dr Bradbrook says contributed to the discharge of the jury and solely concentrates on matters attributable to her.

10.2 This is, I believe, to misunderstand, the purpose of the judgement of 19th July. I gave my judgement on the reasons for discharge as an oral judgement of 18th July to which Dr Bradbrook does not refer in her submissions.

10.3 Having reviewed the transcript, starting with the clear limitations placed on Dr Bradbrook and confirmed to her in writing on the morning of 18th July and which she said she understood, the limited permission to speak to motives, and the repeated occasions when Dr Bradbrook put before the jury matters which she was not permitted to do, I suggest it is unsurprising that the reasons given by me for discharging the jury focus on those breaches. I refer to the transcript of the evidence and the ruling I made.

10.4 The written judgement of 19th July does not and was not intended to explain or repeat the reasons for the discharge, let alone the whole history of the case, but to

focus on the reasons that I concluded it would be necessary to give detailed directions for the conduct of the future trial and so that Dr Bradbrook, being unrepresented, was clear as to the parameters set by the law.

10.5 Thus I do not consider that a complaint that the judgement of 19th July, or the oral judgement of 18th, fails to cover the whole range of the case, and the undoubted difficulties there have been, can amount of evidence of bias. A fair minded and informed observer would necessarily consider the totality of the rulings.

11. The prosecution opening and prosecution evidence

11.1 I was disappointed that the prosecutor had served the same draft as used formerly, given the views I expressed about the tone and content of the prosecution opening, and given that the prosecutor knows the terms in which I was going to direct the jury, immediately following the opening, as to the issues.

11.2 I did not make a finding that the opening at the July trial contained material that was inadmissible – rather I though it inappropriate given that both sides knew that immediately afterwards I was going to give the jury written directions immediately afterwards (see my decision on the defendant's subsequent applicatoin). There were other aspects of the opening, I thought inappropriate, for instance referring to juries hearing case of rape, of sophisticated fraud, or of violence.

11.3 I did not consider these issues then, or now, to be anything like a contempt of court or a breach of an order made by me. To characterise them as such is not right. I did, in the course of the hearing on 6th October provide some firm suggestions on what should be omitted to avoid concern. The prosecutor has accepted my guidance (subject to one request I shall consider below).

11.4 At the time the July opening was delivered I considered these to be matters that could properly addressed in directions to the jury. As it was I did consider the subsequent application of the defendant that in fairness she should be permitted to speak to her motivations and grant that application in specific limited terms (see my oral ruling – and limited to 10 minutes) which I judged would address any perceived unfairness. As the case continued, and despite my interventions to provide advice and guidance, I was to find that defendant far exceeded that limited permission with the result we know.

11.5 If the "fair minded and informed observer" had any concerns that I did not raise the matter immediately after the opening then I trust they would be reassured both by the ruling given when it was raised and the various interventions I made during the case to preserve fairness, including, for example, offering Dr Bradbrook further time for preparation, early making clear to the jury that in this case they must not draw any adverse inference from the interview, that if Dr Bradbrook chose not to give evidence I would not give an adverse inference direction, in relation to the prosecution titling on the video evidence, and to disregard any view of a police officer.

11.6 As to the matters of evidence mentioned by the prosecution in opening and produced during evidence I do reject the notion that it was unfair for the prosecution to adduce evidence that the event took place during a protest (including the video and sound of the act complained of) or that I had some obligation to prevent that.

Likewise the edited form of interview contained a brief passage referring to Dr Bradbrook's position, to acknowledge that.

11.7 Dr Bradbrook's argument is that:

a. either there should be no mention at all of the fact that the event which is the subject of the charge took place as part of a protest and any such context should be excised,

b. or that all and any evidence of beliefs held by Dr Bradbrook, or her account of facts that she believes support them should be admissible. What she seeks is to "have my voice" by which she clearly means that she should be entitled to say anything that she considers relevant without reference to limitations the law imposes.

11.8 The focus, I emphasise, is on the elements of the charge of criminal damage and whilst some context is entirely appropriate that does not admit wholesale areas of evidence or submission that are not relevant to the issues that, in law, the jury have to determine.

11.9 I note that Dr Bradbrook expresses concern that the prosecutor said in the July opening that Dr Bradbrook's motivation was to "evoke sympathy for her cause". That, she suggests, is trigger phrase which may bring to the jurors' minds hostile reporting about climate protesters. It is in any event a small part of a paragraph of the opening which the prosecution have agreed to excise.

11.10 This raises a more important point which is this. Dr Bradbrook has referred to many media reports about either her, or Extinction Emergency, or protesters which, she says, create a background of potential prejudice in the minds of some jurors which can only be addressed by her being able to say all that she wishes. I considered in July the document "Press attacks on Activists and specific attacks on Gail Bradbrook" provided by Dr Bradbrook on 14th July 2023 and subsequent matters that she has raised.

11.11 However it is our experience that jurors take their oaths or affirmations very seriously and that appropriate directions properly address such matters. Dr Bradbrook may recall that I said to the jury during my initial remarks (the homily) and would say again:

> *Keeping an open mind also means putting aside any ideas you might have, whether from the news, social media or your own life, about protesters or protests, or the wider issues of climate change or other environmental issues. Your task, your job, is to decide the case according to the legal directions I shall give you and the facts that you find to be proved from the evidence you will hear.*

11.12 Therefore I do not consider that permitting a bulk of otherwise inadmissible evidence is necessary to address that concern, if it is a real one. The cure would undoubtedly be worse than the disease. Furthermore I cannot accept that my refusal to allow it on this ground would be perceived as bias by a fair minded and informed observer.

12. Warnings given to the Defendant

12.1 I have pointed out the judge's duty, where a defendant is not represented, to explain the process and warn of possible consequences so as that the defendant does not unwittingly proceed in a way that results in those consequences.

12.2 General guidance for the unrepresented – but tailored to this case - was given by my document in April 2022. As is standard practice that document urged Dr Bradbrook to seek legal representation so as to be clear on the requirements of the court process. Whether she sought or seeks such guidance or not is a matter for her but if she does not that cannot exempt her from the requirements laid down by the law or entitle her to act as if they do not apply to her.

12.3 Dr Bradbrook has, like any other unrepresented defendant, been given some latitude because she is not a legal professional that does not come as of right. She has spoken of having received advice from a legally trained person but that is unlikely to be a good substitute for a trained professional fully instructed on the case. Although she has demonstrated some familiarity with other reported cases involving protesters I remain concerned that she has not focussed on the fundamentals of admissibility, hearsay and expert evidence despite my prompting.

12.4 To assist her during the trial she was given the further document (annexed below) summarising matters that had been conveyed in earlier judgements and orally.

12.5 Dr Bradbrook characterises warnings she has been given during the hearings and in writing in my judgements and the Order of 19th July 2023 as threats but, I suspect, would be even more aggrieved were such consequences to be incurred without clear warnings.

12.6 I am pleased to hear that Dr Bradbrook tell me she is not trying to engineer outcomes such as contempt of court. I hope that will not arise and clear rulings are intended to assist her in that. Having reviewed the transcript I believe that a fair minded and informed observer might commend my restraint in not taking issues of contempt of court further at that time.

12.7 Dr Bradbrook makes particular complaint that the warnings I have given about the risk that s.46 Criminal Justice Act 2003 might be applied to discharge the jury and continue with trial by judge alone were threats. Given that I had directed her to the section I was disappointed that she had not read it. Dr Bradbrook argued that the matter should be the subject of a preparatory hearing. However s.46 is focussed on events that happen during a trial and, itself, makes provision for a staged approach and possible appeals. I repeat that I hope we will not have to consider s.46. If we have to do so then s.46 will guide us.

12.8 I observe that there has been no prosecution application under s.44 CJA.

12.9 Given the events of the trial in July and the fact that the prosecutor gave notice that they might make an application under s.46 if events during that trial justified an application I felt it important to ensure that those matters were clearly set out in writing.

12.10 The formal warning given in my order of 19th July 2023 was in these terms:

> *the defendant is warned that the prosecution may in certain circumstances apply under s.46 Criminal Justice Act 2023* [a typo for 2003] *for the jury to be discharged and for the trial to continue before a judge alone*

12.11 This section applies when the judge is minded during a trial on indictment to discharge the jury and he is so minded because jury tampering appears to have taken place. Jury tampering can occur at the instance of a defendant or by others who are outside the control of the defendant. There are many and varied possibilities and I make it very clear that any application would have to be considered on its merits and on the particular facts that arose.

12.12 To illustrate that this is a potential and not an imagined issue it may assist if I refer to the ruling of Cavanagh J (Central Criminal Court 4th April 2023) in the case of **Warner** who, it was alleged, had stood outside the Inner London Crown Court asserting a right of jurors to acquit according to their conscience. Whatever the specific facts, and they were undetermined by Cavanagh J when decided that the proper course was to refer the matter to the AG for the AG to decide what action was appropriate, Cavanagh J did make these observations:

> *45 I say at the outset that I am not prepared to take no further action. The allegations against Ms Warner, if true, are very serious. As I have said, they amount to allegations of a deliberate course of action designed to entice and encourage jurors to act in breach of their jury oaths and affirmations, in a way that would undermine the rule of law, and would, in addition, potentially result in jurors committing a criminal offence contrary to section 20C of the Juries Act 1974 by trying the issue otherwise than on the basis of the evidence presented in the proceedings on the issue. Moreover, the facts as alleged suggest a degree of subterfuge and concealment. It would not be appropriate simply to take no further action. …*
>
> *56 This is that the subject matter of the allegations, if proved, is very likely to amount, at least potentially, to the criminal offence of attempting to pervert the course of justice as well as to contempt. The act of a third party in intentionally persuading a jury member to break their jury oath and to decide the case by reference to matters other than the evidence and the judge's directions on the law amounted, historically, to the common law offence of embracery. However, this offence became obsolete in the Nineteenth Century and such conduct now amounts to the criminal offence of perverting the course of public justice. See* ***R v Owen [1976] 1 WLR 840 (CA).*** *Intentionally attempting to persuade jury members to disregard the evidence and the judge's legal directions thus amounts to the offence of attempting to pervert the course of justice.*

12.13 I have in mind that the case of **Owen** referred to was one where a person approached a juror in a murder case and said "Guilty, He's guilty you know. He's already stabbed someone before".

12.14 I emphasise that this ruling on a decision to refer is such that it is not binding on me nor determinative of the issue. It is, however, the considered view of a judge senior to me and following legal argument.

12.15 What the observations of Cavanagh J certainly do flag up is that there is a real issue here and I set it out at some length so that there is no risk of misunderstanding.

12.16 Dr Bradbrook suggests that I do not intend to follow through on s.46 and my primary intention is to intimidate and coerce. That certainly misunderstands my intent. It is my earnest hope that the trial can proceed and conclude with a verdict of the jury without any issue of "jury tampering" – the phrase used in the Criminal Justice Act 2003 – arising.

12.17 I do not know what will occur during the forthcoming trial. If events occur such that s.46 needs to be considered it will be considered and if not then it will not arise.

12.18 Thus I am unable to accept that giving Dr Bradbrook a warning about the possible consequences is any evidence of partiality or bias. It was and is no more and no less than my duty.

13. Terms of my order of 19th July.

13.1 Dr Bradbrook complains that my order of 19th July 2023 was not even handed

13.2 The relevant portions about which there is complaint are these:

> *By 8th September 2023 prosecutor to serve a draft of what she proposes to say to the jury in opening.*
>
> *By 22nd September 2023 defendant to serve:*
>
> > *a draft of what she proposes to say to the jury in evidence and in closing, ensuring that the same complies with the ruling of the court given on 14th July 2023 and 19th July 2023.*
> >
> > *a draft of what any witness she intends to call for the defence will say in evidence.*
>
> *The court will review the drafts from the prosecution and the defence at the pre-trial hearing to consider whether they contain material that is not admissible or nor permissible in these proceedings.*

13.3 The final paragraph was not included in Dr Bradbrook's submission but is significant as it makes plain that the review will be of both prosecution and defence. The references to the rulings given on 14th and 19th July in the case of Dr Bradbrook focus on the need for her evidence and submissions to be compliant with those rulings and was necessary given the reasons for which I had found it necessary to discharge the jury.

13.4 The prosecution were not, of course, asked to provide a draft of any closing submissions because, since Dr Bradbrook is not represented, the expectation is that there will be no prosecution closing speech, and the content of the prosecution evidence adduced before the jury had not been contentious at the time (although Dr Bradbrook has now raised an issue on that which I have considered elsewhere).

13.5 I cannot accept that the terms of that order are any evidence of bias.

14. Should the prosecution have received specific warnings equivalent to those to Dr Bradbrook?

14.1 Dr Bradbrook complains that it is she who has received warnings about possible contempt or applications for costs and not the prosecutor.

14.2 I make it clear that I have not observed anything from the prosecution near amounting to a contempt of court. Diary issues, failing to file documentation through inadvertence or the other matters pointed to by Dr Bradbrook, however regrettable, are far from that. I have already considered the issues in relation to the opening.

14.3 However, much more importantly, the prosecutor is, as Dr Bradbrook points out, a legally qualified and an experienced professional. If she were to commit a contempt or face an application for wasted costs then it would not avail her to say that she did not receive a clear warning.

15. Bushell's Case

15.1 I turn to what I consider to be the real centre of Dr Bradbrook's submissions, namely that I should allow the case to proceed without any hindrance to the evidence or submission that she places before the jury because of Bushell's case. She characterises my existing order as a repressive order and part of her argument that I should recuse myself and so seeks to raise the issue again. I found in Dr Bradbrook's written and oral submissions for this hearing what I judge to be a continued misunderstanding, perhaps wishful thinking, about what Bushell's case means.

15.2 I note that the concept is referred to as "jury nullification" in the USA[1]. In our jurisdiction we refer to Bushell's case. Any US jurisprudence is not directly

[1] I do not claim any expertise in American law but to understand what might be meant by "jury nullification" in that jurisdiction I read an Oxford Academic article by Nancy King 3rd February 2015. From this I believe the US Supreme court characterized jury nullification as the "assumption of a power which [the jurors] had no right to exercise, but to which they were disposed through lenity" (*Standefer v. United States*, 447 U.S. 10 [1980], p. 22). And … As one court recently stated, "The defendant may believe that the federal drug laws are discriminatory and hypocritical, and that such beliefs are relevant to his defense, but '[a] federal criminal trial is not a forum for a policy debate'" (*United States v. Duval*, 865 F.Supp.2d 803 [E.D. Mich. 2012], p. 506). The Supreme Court applied this principle in 1994 when it reiterated that a defendant has no constitutional right to inform the jury what sentence a defendant faces if convicted. The Court explained: "The jury's function is to find the facts and to decide whether, on those facts, the defendant is guilty of the crime charged. The judge, by contrast, imposes sentence on the defendant after the jury has arrived at a guilty verdict. Information regarding the consequences of a verdict is therefore irrelevant to the jury's task. Moreover, providing jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their fact-finding responsibilities, and creates a strong possibility of confusion" (*Shannon v. United States*, 512 U.S. 573 [1994], p. 579). … Also commonly upheld as constitutional are instructions that inform jurors that they must follow the law and the judge's instructions even if they disagree, or instructions that inform the jurors that they have "a duty to" convict or "must" convict if they find the government has proven the elements of the crime beyond a reasonable doubt (Rubenstein

applicable for a number of reasons and it has not been argued before me but I have no reason to think that their approach differs in substance from my understanding of the law in this jurisdiction.

15.3 As I have observed Dr Bradbrook has, once again, confirmed that, given the state of the law and authorities, she does not identify a defence known to the law, saying (I summarise) "I do agree that the higher courts do not recognise a defence in law" but saying that "there are cases where the parameters of the law are not sufficient to achieve a fairness [a fair trial] and the jury is the crown jewel to take care of these responsibilities". She said "that is why I intend to explain myself as a mother who will not be silenced by a system that does not know what it is to bring life into the world and care for the continuance of life".

15.4 She accepts that there will be cases where, on acknowledged facts, there is no defence in law. In many instances she accepts a trial in such circumstances would not be unfair. However she asserts that this is a case where the law is potentially out of step with the common sense of ordinary persons. So, if I have understood her correctly, she asks that I find that the law is potentially out of step with the common sense of ordinary persons and so permit a body of material to be presented to the jury which would otherwise be inadmissible. Making all allowance for her use of the word "potentially", I certainly decline to makes such a finding. Reaching such a conclusion would be wholly outside my role as a judge.

15.5 Does Dr Bradbrook argue that she should be allowed to make a positive case for a Bushell's acquittal?

15.6 The July trial was accompanied by protesters attending outside the court with placards clearly referencing their understanding of Bushell's case. I express the hope that will not be repeated. The view of Cavanagh J I have cited above is that such actions have the potential to be acts tending and intended to pervert the course of justice. If that is so they are, potentially, jury tampering.

15.7 In her oral submissions to me Dr Bradbrook says that it should not be insinuated that she "will invite the jury to do anything to [diverge?] from what the judge says or to acquit. I ask that they have the facts and direction of the judge and my rationale – then make their own decision".

15.8 However page 7-8 of Dr Bradbrook's 75 page document of "What I want to say to a jury of my peers" deals expressly with the issue (see also pages 72-73) and I observe that despite my very clear written direction that "You must not indicate to the jury that they can deliver a verdict other than on the basis of the legal directions of the judge and the (admissible) evidence presented in the courtroom." the defendant in her oral evidence on 18th July got as far as saying to the jury "Now as a jury you have the right to act on your convictions, it's…" at which point I interrupted her (41D). When, in the absence of the jury I suggested to her that her comment was plainly intended to move to a territory where she was inviting the jury to determine the case not according to the legal directions and evidence she denied it.

2006; *United States v. Appolon*, 695 F.3d 44 [1st Cir. 2012], pp. 64–65; *United States v. Stegmeier*, 701 F.3d 574 [8th Cir. 2012], pp. 582–583; *United States v. Davis*, 724 F.3d 949 [7th Cir. 2013], pp. 954–955).
I have read the whole article.

15.9 What is all too clear is that, whether Dr Bradbrook intends positively to ask a jury to disregard my directions and choose to acquit for other reasons, her whole intent is to provide a body of material that she hopes will achieve that result.

15.10 Were that to be allowed it would follow that the Crown would be entitled to cross-examine on her assertions and even to adduce evidence to show that her presentation of issues is inaccurate or partial. That would be a whole body of material which falls into the category of inadmissible when the case is about whether it is a criminal offence intentionally to cause damage to property costing some £27,000 to repair for which there are specific legal defences if they arise.

15.11 What follows from Bushell's case.

15.12 I considered arguments on Bushell's case in my ruling on 14th July 2023 and found:

> *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.*
>
> *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.*
>
> *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.*
>
> *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.*
>
> *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.*
>
> *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.*

15.13 My understanding of Bushell's case, and the rulings I gave, and now give, about it, must be based on the case itself and subsequent authorities about it. I do not

identify any arguments, let alone authority, that would justify a fresh decision but out of courtesy to Dr Bradbrook as an unrepresented defendant, and because she has cited some quotations from the press including from legally qualified persons I will review it.

15.14 Dr Bradbrook's further submissions

15.15 I acknowledge the quotes from Michael Mansfield KC and Professor Vogler and references to the cases of Kay Gilderdale and Clive Ponting.

15.16 I have considered them and will comment on them but must make it clear that I have to determine the case according to authority and these materials are far from that.

15.17 The quote from Mr Mansfield appears in a Guardian article of 23rd July 2023 in connection with the decision of the Solicitor General to proceed with contempt proceedings against Ms Warner. The quote may well reflect the view of Mr Mansfield, and he is a respected lawyer, but it is a statement of his opinion. In contrast I have relied upon the judgement of Cavanagh J in referring the case to the AG/SG, which, whilst the relevant passages are not binding authority on me are the considered view of a judge substantially senior to me and who reached that ruling after legal arguments presented by lawyers on both sides.

15.18 Dr Bradbrook cites another opinion piece in the Guardian published on 27th September 2023 authored by Professor Richard Vogler, a professor of comparative criminal law and justice at the University of Sussex. I note that Professor Vogler acknowledges, whilst disagreeing with it, that juries are never told about what he characterises as a "right". As I have been at pains to point out Bushell's case asserts no more than that enquiry cannot be made of jurors who reach what appears to be a "perverse" verdict not can they be punished for it. I rule on the content of Bushell's case not the wording of a plaque at the Central Criminal Court. The Guardian piece is very much offering an opinion on what Professor Vogler suggests should be the law and does not assist me in determining what it is, nor upon procedure.

15.19 Dr Bradbrook also relies on the prosecutions of Kay Gilderdale and Clive Ponting. Again she relies on a Guardian article, this time dated 25th January 2010 about the trial of Kay Gilderdale. The report discloses that the trial judge was Bean J, as he was then, and his criticism of the CPS for pursuing a charge of attempted murder rather than assisted suicide. The case may be of interest on its particular facts, like that of Clive Ponting, but Dr Bradbrook has not produced anything that shows that parties are entitled to adduce evidence that goes beyond what would be admissible, nor that they are entitled to make overt or implied submissions seeking an acquittal other than within the framework of the judge's directions.

15.20 Since Dr Bradbrook is unrepresented I conducted more research of my own.

15.21 Given Bushell's case there will be few if any authorities where the higher courts have considered a situation where it was suggested that a jury had returned a not guilty verdict which was thought to be "perverse".

15.22 However in my own researches I have identified some occasions when Bushell's case has been considered in the context of jurors who do not return a verdict

at all. I consider that they support the ruling. None, as I read them, supports an attempt to leverage Bushell's case into something that it is not.

15.23 **DPP v Nasrullah; [1967] 2 AC 238**, was a decision of the Privy Council on appeal from Jamaica where a jury had found the defendant not guilty of murder but had been unable to agree on an alternate verdict on manslaughter. A question of autrefois acquit arose. There was discussion whether a jury could be obliged to return a verdict on the manslaughter alternative. In the course of his speech at 253B Lord Devlin said:

> *Since the celebrated decision in Bushell's Case a jury cannot in this sense be compelled to do anything. The law is now as stated by Lord Mansfield C.J. in Rex v. Shipley (99 ER 774,824 and [1784] 4 Doug 73, 170)*
>
> > *"it is the duty of the judge, in all cases of general justice, to tell the jury how to do right, though they have it in their power to do wrong, which is a matter entirely between God and their own consciences."*
>
> *"But the point remains in substance the same. Can a conscientious jury in a case such as this ignore, without doing wrong, a judicial direction to consider the issue of manslaughter?"*

He went on to conclude that the law did allow a jury that could not agree to be discharged (unlike in former times) and so this did not arise.

15.24 *Rex v. Shipley* (99 ER 774 and [1784] 4 Doug 73, 170) had been a trial on indictment for libel. Given the nature of the trial and the times it was held I approach it with some caution but Lord Mansfield had gone on (in terms somewhat florid by the standards of today):

> *In opposition to this, what is contended for?—That the law shall be, in every particular cause, what any twelve men, who shall happen to be the jury, shall be inclined to think; liable to no review, and subject to no control, under all the prejudices of the popular cry of the day, and under all the bias of interest in this town, where thousands, more or less, are concerned in the publication of newspapers, paragraphs, and pamphlets. Under such an administration of law, no man could tell, no counsel could advise, whether a paper was or was not punishable. I am glad that I am not bound to subscribe to such an absurdity, such a solecism in politics; agreeable to the uniform judicial practice since the Revolution, warranted by the fundamental principles of the constitution, of the trial by jury, and upon the reason and fitness of the thing, I am of opinion that this motion should be rejected and the rule discharged.*

15.25 A more recent decision is **R v Schott and Barclay [1997] EWCA Crim 3424** where a judge had received a jury note saying the jury were unable to agree "owing to some jurors conscious beliefs" and embarked on an enquiry which ended with contempt proceedings against two jurors which were quashed by the Court of Appeal on a range of grounds.

15.26 Bushell's case was cited for the passage therein where the Chief Justice said that it was a misdemeanour against a juror's oath wilfully not to find for either side and that a juror may be fined if he withdrew from participation in the deliberations of the jury. This is clearly a different point but one where the Vice President, Rose LJ said that he was not persuaded that Bushell's case was of historical interest only.

15.27 At [p15] he said:

> *Fourthly, although a juror properly empanelled is not accountable for anything said or done by him or her in discharge of the office of juror (see Halsbury's Laws, 4th edition, volume 26 paragraph 653), is not punishable for contempt for returning a perverse verdict (see Chief Justice Vaughan in Bushell's Case), and is not indictable for breaking his oath as a juror (see Hawkins Pleas of the Crown, 8th edition 432), it is a different matter where a juror would "wilfully not find for either side": in such a case a juror is "fineable", as Chief Justice Vaughan said in Bushell's Case; and Hawkins Pleas of the Crown (1824) volume 2, page 213, section 16 states that it is an offence for a juror to refuse to give a verdict. Both these examples, it is to be noted, are likely to be manifest from the juror's conduct in court. But contempt can occur from conduct in the jury room. There is no difference in principle between a person withdrawing from the obligation of a juror by physically leaving the room and withdrawing from it, though staying in the room, as Chief Justice Vaughan said.*

15.28 I consider these authorities to be consistent with the ruling I gave on 14th July 2023.

15.29 I am reinforced in my view because:

a. it is clear that no defence that it is not "proportionate to prosecute" can arise in this case. See **AG Ref No 1 [2022] EWCA Crim 1259**.

b. By section 20C of the Juries Act 1974, as inserted by an amendment in 2015, it is an offence for a member of a jury that tries an issue in a case intentionally to engage in prohibited conduct. Prohibited conduct means conduct from which it may reasonably be concluded that the person intends to try the issue otherwise than on the basis of the evidence present3eds in the proceedings on the issue. I read that as referring to admissible evidence. It would, of course, be equally an offence to incite a juror to commit an offence under s.20C.

15.30 Dr Bradbrook suggests that if there is ambiguity in the law about whether she is or is not allowed to make an overt or implicit case that a jury should acquit "on conscience" I should resolve that in her favour. I find no such ambiguity.

16. Recusal generally

16.1 I have considered the issues raised by Dr Bradbrook individually and collectively. She has raised them in mostly measured terms. In very broad summary they come to these allegations:

a. That I have ruled that she cannot advance a case based on matters that are not relevant to the legal issues the jurors have to determine (even if she does not expressly seek an acquittal from the jury in Bushell's terms)

b. That my warnings to her as to potential consequences amount to threats and/or coercion.

c. That my treatment of prosecution and defence has not been even handed.

16.2 I have sought to deal with the points raised in this judgement. I have certainly considered all that she has written and her submissions on 6th October.

16.3 It is always uncomfortable to have to make judgments about one's own actions and conduct but I am satisfied that a fair minded and informed observer, having a full picture of my conduct of this case before this court would not identify here evidence of bias.

17. Other pre-trial rulings

18. The terms of the opening of Trial 2

18.1 I provided to the parties a copy of the prosecutor's draft with my strong suggestion that some passages (struck through) would not assist this case and are not appropriate in all the circumstances.

18.2 Ms Wilkinson accepts that guidance.

18.3 However she asks that I approve her adding the following (in italics)

> You are not here to decide the correctness or otherwise of the HS2 link, or what can or should be done in relation to climate change *nor are you here to pass a moral judgement on Dr Bradbrook's views. You are here to fulfil your role in accordance with the law.*

18.4 I have reviewed what I said and will say in the homily about deciding the case on the evidence the jury will hear and according to the legal direction I shall give, the need to keep an open mind putting aside any ideas that the jury may have about protesters (quoted above) and in the initial post-opening key legal directions which include:

> *There is no dispute in this case that Dr Bradbrook holds strong and sincere views on the dangers of climate change and related issues, and it is not disputed that she was motivated that day by her beliefs.*
>
> *However this case is not about whether you agree or disagree with those beliefs, let alone about climate change generally. Legally this case must be focussed on four questions…*

18.5 I conclude that the issue that Ms Wilkinson seeks to cover in her proposed addition is something that I cover in legal directions and so I ask that Ms Wilkinson does not make that addition.

18.6 Ms Wilkinson has correctly observed that where a defendant is self representing the prosecution does not normally have a closing speech. That is not an immutable rule and circumstances can arise in which a closing speech is justified. I don't attempt to speculate about such circumstances in this case.

19. The direction to provide drafts of evidence and closing submissions.

19.1 Dr Bradbrook says that she has not provided these as yet because she had not received the draft opening by the due date.

19.2 She now has the draft opening and knows the parts that will be omitted.

19.3 I will therefore give Dr Bradbrook the opportunity to present drafts consistent with my rulings so that they may be reviewed in advance of the trial date

19.4 Dr Bradbrook says that it was unfair that the pre-trial hearing before the July trial took place only the Friday before the case. Although further time was offered on the Monday she, quite understandably, wished to proceed. Regardless of whether her breaching of my rulings on what she could or could not say to the July jury was inadvertent or intentional it is important that Dr Bradbrook should not be in any doubt where the lines I have identified would be crossed during the next trial.

19.5 In her written submissions Dr Bradbrook (within paragraph 4) reasserted her position that she seeks to put the totality of the points in her 75 page document (as considered in my ruling of 14th July 2023) to the jury saying that without that she cannot "have her voice" or have a fair trial. However in oral submissions she said that some parts of that document were a critique of the system and she would not seek to place them before the jury and instead planned to refocus what she sought to say to the jury.

19.6 I shall therefore give her a further opportunity to serve the material in the direction set out below. I urge her to do so, and in doing so to have regard not only to issues of relevance on which I have ruled but also to the basic principles relevant to hearsay and expert evidence, particularly when considering referring to anything that another person is said to have said for the truth of its content, or when considering referring to the opinion of another person. Special care is required if Dr Bradbrook seeks to speak of other trials.

19.7 If she does not provide such materials then I cannot help her by advising where lines would be crossed other than as I have done in my rulings hitherto. I have already ruled on the 75 page document. There is no need for me to repeat the individual warnings as to possible consequences because I am satisfied that Dr Bradbrook understands them. If she has questions about whether particular evidence or submissions are admissible then I urge her to raise them with me prior to the trial.

20. Witness Statement of Jonathan Fuller 28th August 2023

20.1 Dr Bradbrook has provided a statement from Jonathan Fuller dated 28th August 2023.

20.2 A previous undated statement from Jonathan Fuller had been served in May 2023 (I25) and was considered in my ruling of 14th July 2023[1]. It appears to be in the same terms but with updates about more recent events, but rather than spend time checking it line for line but I have instead concentrated on reading with interest the current version.

20.3 In so far as each statement contains matters said to be expert opinion evidence they do not comply with the important requirements of CrimPR 19 to which Dr Bradbrook has repeatedly been referred. However it is clear, following my ruling of 14th July on the issues relevant to the case, that this statement – whether perceived as factual or intended expert testimony, is not admissible in these proceedings.

20.4 I have in the past ruled on the statement of Tim Crosland.

21. Further hearing

21.1 Having discussed realistic timescales with the parties I have directed that:

a. Dr Bradbrook serve by 20th October a draft of what she proposes to say to the jury in evidence and in closing and a draft of what any witness she intends to call for the defence will say in evidence.

b. There be a further hearing on 24th October TE 1 day for me to consider the contents of those documents and advise if I should find that the breach parameters set for this trial.

21.2 I have, I hope, made clear that the content must comply with the ruling of the court given on 14th July 2023 and 19th July 2023. The guidance document appended is a useful aide memoire of key points.

21.3 The latitude granted to Dr Bradbrook because of the tone and content of the prosecution opening of the July trial is not carried over to the second trial given the adjustments now made to the opening.

21.4 The trial remains listed 30th October.

HHJ Edmunds KC – 10th October 2023

APPENDIX – Directions handed to Dr Bradbrook morning of 18th July 2023

IN THE CROWN COURT AT ISLEWORTH

Isleworth case reference: T20190982

[1] The typo of my original para 13.1 of that section needed correction but not in relation to Mr Fuller.

THE QUEEN

-v-

Gail BRADBROOK

SUPPLEMENTAL NOTE ON SELF-REPRESENTATION

Evidence and Speeches

1. After the end of the prosecution case comes the time where you may give evidence and call other witnesses.
2. You do not have to give evidence or call witnesses.
3. The evidence must be relevant to the issues in the case as I have ruled on them. I understand that you do not agree with my ruling but it remains my ruling.

Inferences

4. In many cases a jury is told that if a defendant chooses not to give evidence that they can draw an inference against the defendant. I have told you that in this case the jury will be told that if you choose not to give evidence that they should NOT hold that against you.
5. I will also direct the jury not to hold against you that some questions in interview were answered “no comment”.

Giving evidence

6. If you choose to give evidence then the prosecutor will be entitled to ask you questions in cross-examination. The prosecutor can only ask questions which are relevant to the issues in the case.
7. If you choose to give evidence then there are some restrictions that apply:

a. You must not refer to the rulings of the court in a negative way;
b. You must not share your views on climate change, HS2 or environmental issues, nor your critique of the political or legal systems EXCEPT as permitted by court rulings.
c. You must not indicate to the jury that they can deliver a verdict other than on the basis of the legal directions of the judge and the (admissible) evidence presented in the courtroom.
d. You must not refer to the consequences of a conviction or acquittal.

Closing speech

8. The closing speech is your opportunity to comment on the (admissible) evidence that has been given in the case, and to present arguments, based on that evidence, why you say that the prosecution have not proved the case.
9. You may not give additional evidence during your speech. The other rules above continue to apply.

Advice from the Judge

10. If you are uncertain whether particular evidence or comments are admissible or permissible you are encouraged to discuss that with the judge in the absence of the jury. This will avoid interruptions.

This note is a ruling of the court.

18.07.23