

R v MILO PONSFORD, SAGE WILLOUGHBY, RHIAN GRAHAM & JAKE SKUSE

LEGAL DIRECTIONS - JUDGE'S HANDOUT

My jobs –

1. To explain to you the law which applies in this case.
I am responsible for decisions about what legal rules you have to follow.
All of my directions about the law, set out in this document, are compulsory for you to follow - you have no choice. If I get them wrong they can be corrected by an appeal.
2. To remind you of the core parts of the evidence to help you remember what witnesses have said, but you are the assessors of the evidence, not me. I will do that after you have heard the closing speeches of the advocates in the case.

Your jobs –

1. Appoint someone to chair your discussions. Choose someone in any way you want. That person should ensure everyone is given the opportunity of expressing their views and everyone listens respectfully to each other. The person you choose to chair your discussions doesn't have any special status – you are all equally important – you each have one vote. When you have made up your minds one of you will need to act as your spokesperson and answer a series of questions from the court clerk to tell us what verdicts you have reached.
2. Make the necessary decisions about the facts of this case, as a group of the 12 of you together, in order to come to your agreed verdicts of either 'guilty' or 'not guilty'. Here are some guidelines about how to approach your task
 - Assess what witnesses have said and assess the other material placed before you so as to decide what facts have been proved.
 - You are the only judges of the evidence.
 - Throughout your discussions as a jury you have to decide on the facts of the case. That's not for me, nor anyone else.
 - Respect each others' opinions and value the different viewpoints you each bring to the case.

- Be fair and give everyone a chance to speak.
 - It is okay to change your mind.
 - Listen to one another.
 - Do not be afraid to speak up and express your views
 - Do not let yourself be pressured into changing your opinion, and do not pressure anyone else.
 - Do not rush into a verdict to save time. Everyone involved in this case deserves your attention and thoughtful consideration.
 - Do not under any circumstances make your own inquiries about anything to do with the case (as explained in the handout “Your Legal Responsibilities as a Juror” that you received on the first day of the trial).
 - If someone is not following the instructions in this document, or refuses to engage, or relies on other information outside of the evidence presented to you then you must let me know by sending me a note straight away.
 - You can vote on where you have all got to in your views at any stage of your discussions.
 - You can take votes by raising your hands or by writing it down – that is up to you.
3. Your verdicts have to be unanimous: 12-0 decisions. (If the time were to come when I could accept any verdict from you involving fewer votes than 12 in favour of it you must wait until I call you back into court and tell you about it.)

Who has the job of proving the facts of the case?

The Prosecution has brought the case to court, so the Prosecution has the burden of proving its allegations.
A Defendant does not have to prove anything or disprove anything.

How is something ‘proved’?

Something is proved if, and only if, you are sure about it in the light of all of the evidence you have heard on that topic.
If, in the light of all of the evidence on that topic, you are not sure about it, then it hasn’t been proved.

Separate verdicts

There are four Defendants and so there are four verdicts of 'guilty' or 'not guilty' you have to reach.

You must examine the evidence in relation to each Defendant - one by one, reaching a separate verdict on each, based upon your analysis of the evidence against each of them.

Your verdicts may well all be the same, but they might be different.

It all depends on your view of the evidence against each.

What is it that has to be proved by the Prosecution for 'Criminal Damage'?

The indictment charges contain a number of separate ingredients, all of which the Prosecution must prove before you can convict a Defendant.

The Prosecution has to prove all of the following against a Defendant (D) before you may find him/her guilty of causing criminal damage:-

- 1) D, jointly and together with others
- 2) damaged property;
- 3) the property belonged to another;
- 4) D intended to damage it, or was reckless as to whether it would be damaged;
and
- 5) D did not have a lawful excuse for damaging it.

We are going to examine each of those five ingredients in a little more detail:-

- 1) The prosecution alleges that the Defendants acted "*jointly and together with others*". The law is that a person may be guilty of a crime either by carrying it out themselves, or, if they intended that the crime should be committed, by deliberately assisting or encouraging or causing it to be committed, even if it is actually carried out by others. A Defendant in this case may therefore be guilty, even if they did not personally cause damage to the statue, if they deliberately assisted/encouraged/caused others to damage it by providing ropes or by attaching ropes to the statue, intending to assist others to intentionally or recklessly cause damage to the statue.

- 2) Property is “*damaged*” if it is temporarily or permanently physically harmed. Whether you are sure there was physical harm to the statue or not (which is a question of fact and degree) is a question for you to decide on the evidence which you have heard.
- 3) Property is to be treated as “*belonging*” to those who have custody or control of it and to those who have any proprietary right or interest in it. The Prosecution case is that the statue was maintained by Bristol City Council and held in trust on behalf of the people of Bristol. The Defendants have not suggested that the statue belonged exclusively to one or more of them – they do not dispute that it “*belonged to another*”.
- 4) “*Intending to damage the statue, or being reckless as to whether it would be damaged.*” ‘Intending’ is a straightforward word which needs no further definition. D would have acted ‘recklessly’ as to whether the statue was damaged if D was aware of a risk that damage would occur and it was, in the circumstances known to D, unreasonable to take the risk. If D was unaware of a risk that damage would occur then D could not have been reckless.
- 5) It is for the Prosecution to disprove that a Defendant had a “*lawful excuse*” for damaging someone else’s property. In this case it is being argued that a D had one (or more) lawful excuses. You will have to examine the lawful excuses set out below and decide if the Prosecution has disproved them.
- (i) *The use of reasonable force to prevent a crime.*
 A person is to be treated as having a lawful excuse if:-
- (1) they used such force as was reasonable in the circumstances as they believed them to be
 - (2) in the prevention of a crime.
 - (3) When they gave evidence you may consider that the Ds were saying they used force to prevent the following crimes:
 - the public display of indecent matter
 - the display of a visible representation which is abusive, within the sight of a person likely to be caused distress by it.

I will explain a little more about each of those three parts of this *lawful excuse* which is relied upon by the Defendants, but I will do so in reverse order: (3), (2) & then (1), because that will make it easier to understand.

(3) May D have genuinely/honestly believed that a factual situation existed which amounts to a criminal offence (even if D's belief was a mistaken one)?

- There is a criminal offence of *displaying indecent matter publicly*.

May D have genuinely/honestly believed Bristol City Council was displaying 'indecent matter' in public with this statue on the Centre?

The definition of 'indecent' in the Oxford English Dictionary includes: "unbecoming; highly unsuitable or inappropriate; in extremely bad taste; unseemly; offending against the recognized standards of propriety and delicacy; highly indelicate..."

- There is a criminal offence of *displaying a visible representation which is abusive, within the sight of a person likely to be caused distress by it*.

May D have genuinely/honestly believed that Bristol City Council was committing that crime by displaying an abusive statue, where one or more people were likely to have been caused distress by it?

The Defence argue that they genuinely/honestly believed that a factual situation existed which amounts to these criminal offences being committed by the Council.

The Prosecution argues that no criminal offence was being committed at all by the display of this statue - it was neither '*indecent*' nor '*abusive*', and you can be sure that the Ds did not genuinely/honestly believe a factual situation existed which would have amounted to these crimes.

If you decide that D may have genuinely/honestly believed that a factual situation existed which amounts to these criminal offences, you need to go on to examine the following.

(2) Were D's actions carried out in order to prevent what they honestly/genuinely (even if mistakenly) believed to be a crime?

The Defendants argue that that is what they were doing – their actions were done in order to prevent one or both of those crimes, which they honestly/genuinely believed to be happening.

The Prosecution argues that they were not trying to achieve that, but instead were trying to force their own agenda because they were frustrated by the lack of progress in the debate about the statue.

- (1) Did D use '*reasonable*' force to prevent a crime, in the circumstances as they believed them to be?

It is for you to decide what force was reasonable by your own standards. It is not what D thinks was reasonable – it's what you think was reasonable.

However, the 'circumstances' in which force was used are the circumstances as D believed them to be.

If D only did what they honestly and instinctively thought was necessary to prevent a crime, then that would be strong evidence that reasonable action was taken.

In the case of the first 3 Defendants, did each of them honestly and instinctively think it was necessary to play a part in pulling down the statue to prevent a crime?

In the case of the fourth Defendant, did he honestly and instinctively think it was necessary to help roll the statue all the way to Pero's bridge to prevent a crime?

The Prosecution says that even if you were to conclude Bristol City Council may have been committing one or both of the crimes now alleged (which is disputed), and even if you were to conclude the Defendants honestly (even if mistakenly) took the action they did to prevent one or more of those crimes, it was unreasonable, in the circumstances as Ds believed them to be, to use force like this to prevent it, because there was a process through which concerns about the statue could have been dealt.

The Defendants argue that their actions were reasonable because any such processes had failed.

- (ii) *Belief in the consent of the owners*

A person is to be treated as having a *lawful excuse* if he/she honestly believed, at the time of the acts alleged to constitute the offence, that those who the person honestly believed were entitled to consent to the damage,

would have consented to it,

if they had known of the damage and its circumstances.

(It does not matter if the person's beliefs were justified or not, as long as they were honestly held.)

Neither Milo Ponsford nor Sage Willoughby have presented evidence that could form the basis of an argument that they had this *lawful excuse*.

Rhian Graham and Jake Skuse have given evidence to the effect that they had this *lawful excuse* for their actions, saying that on 7 June 2020 they honestly believed the statue was owned by the people of Bristol and honestly believed that, had the people of Bristol known of the damage and its circumstances, they would have consented to what was done.

The Prosecution argues that there is no way that they could possibly have honestly believed that the people of Bristol would have consented to what they did because they didn't take any steps to find out.

If you consider that this *lawful excuse* applied, or may have applied, in the case of either of those two Defendants, then the Prosecution would have failed to disprove it and you will find that Defendant 'not guilty'.

- (iii) The final *lawful excuse* you have to consider concerns all four defendants (and, again, the Prosecution has the burden of disproving it). However, I am going to deal with it under a separate bold heading:-

Would convicting D be a disproportionate interference with his/her rights?

Courts must read and give effect to legislation such as the Criminal Damage Act in a manner which is compatible with a number of rights which we all have.

Two of those rights are:

- the right to freedom of thought and conscience and to manifest one's beliefs;
- the right to freedom of expression, including to hold opinions and impart ideas.

These rights protect not only beliefs, such as anti-racism, and speech itself, but also actions associated with protest. Even where those actions have more than a minimal impact on the rights of other people, they need not result in a conviction. It is all a matter of fact and degree.

Limitations on these rights are permitted under laws like the Criminal Damage Act if they are necessary in a democratic society in the interests of public safety or for the protection of the rights and freedoms of others.

It requires balancing the defendants' rights to freedom of conscience and belief, to freedom of expression and to protest, as against the interests of public safety and the

protection of the rights and freedoms of others, such as the property rights of the Council.

The Ds will argue that even if you reject all of their other arguments, if you were to convict them it would be a disproportionate interference with them exercising those rights.

You will therefore have to decide if the Prosecution made you sure that convicting them of criminal damage would be a proportionate interference with them exercising those rights.

Even if you are sure that all the other elements of the crime of criminal damage are made out and that no other lawful excuse applies, you must go on to consider whether it is necessary in a democratic society, in the interests of public safety or for the protection of the rights of others, that the defendants should be convicted for their actions.

Another way of looking at that question is to ask whether the interference in the defendants' rights, which a conviction for the offence of criminal damage would cause, is proportionate in all the circumstances, including the individual actions of each D.

It is your task to make an assessment of where the balance lies, having regard to all the facts in the case.

In considering whether a conviction would be disproportionate for any D, the question for you is not whether you agree with their actions or their aims, nor is it about sympathy or whether you think they are likeable. Everyone in the country has these rights and we each enjoy identical protection of those rights. This means that people with whom we fundamentally disagree have exactly the same protection as those with whom we agree.

When examining the facts of this case and deciding whether you are sure it would be proportionate to convict a Defendant, you may wish to consider the following factors. The list is not intended to be exhaustive and you are not obliged to consider any individual factor if you do not consider it to be helpful in reaching your verdict. It is also up to you what weight to give the factors you consider helpful.

- (a) The extent of the interference with the rights of others, notably the rights of Bristol City Council and of other Bristolians on whose behalf they held this statue in trust.
- (b) Whether the Defendant believed in the views which motivated their actions.
- (c) Whether those views relate to very important issues.
- (d) The importance to the Defendant of the method of protest adopted.

- (e) Whether the actions of the Defendant was directly aimed at the matter of which they disapproved.
- (f) Whether the Defendant's actions presented a danger to public safety.

'No comment' interviews

The words of the police 'caution' are: "*You do not have to say anything. But, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.*"

As it says, it is a suspect's right not to answer police questions, but there is also a warning that there might be damaging consequences if they do not mention something when questioned which they later rely on in court.

Two of the accused - Milo Ponsford and Jake Skuse, declined to answer any police questions.

When the Prosecution asked Milo Ponsford and Jake Skuse why, they both told you they acted on the basis of advice from a Solicitor's representative.

They each acknowledged it was their own choice to decide whether or not to answer the police questions and face any consequences from a decision not to. They do not accept that the real reason behind their decisions not to answer questions was because they had not yet had time to think up answers which might provide them with the basis of a defence that they might be able to rely upon if they were charged with criminal damage.

They have now given you detailed accounts from the witness box. I will summarise their evidence in due course, but they were both asked: whether they had any lawful excuse for damaging it. Both replied "no comment". They have now put forward accounts from the witness box, during the course of which they have said they did have lawful excuses for what they did.

Could they have reasonably been expected to set out what lawful excuses they now rely upon to the police when asked about the allegation in their interviews back in 2020? Why didn't they answer the questions with the answers they have now given to you in court?

You must consider their explanations for that. They have each told you the real reason was because they took the advice they were given by a legal adviser. If you accept that

may have been the real reason behind their decision to remain silent, then take this matter no further, don't hold it against them.

However, if you are sure that the real reason for keeping silent was that that Defendant didn't have an answer to those questions and was giving himself time to make-up answers later to support a defence to the allegation, then you are entitled to hold their silence at the police station against them and treat the things they have said from the witness box as having less weight.

You should only reach that conclusion if the prosecution case was so strong as to call for an answer and you think it is fair and proper to do so. You must not convict that defendant wholly, or mainly, on the basis of this point – it is just one of the factors which may feature in your assessment of all of the evidence in the case.

Sage Willoughby and Rhian Graham, on the other hand, answered many of the police questions and explained what motivated their actions. Do not hold it against them that they did not answer some police questions, because those questions have no bearing upon your assessment of whether they are guilty or whether any of the others are guilty.

Expert evidence

In this case you have heard the evidence of Professor Olusoga, who has been called on behalf of Sage Willoughby. Expert evidence is permitted in a criminal trial to provide you with information and opinion, within the witnesses expertise, which is likely to be outside your knowledge. You should look at it in its proper perspective – it is just part of the evidence as a whole to which you may have regard on one particular aspect of the case, namely if you think it helps you assess the question of whether displaying a monument of Edward Colston may be indecent or abusive. You are entitled to have regard to the historical information he has researched and interpreted when coming to your own conclusions. Bear in mind, however, that if, having given the matter careful consideration, you do not accept any parts of his evidence, or do not think it helps you answer the questions you have to answer, then you do not have to act upon it. It is for you to decide what evidence you consider relevant, what evidence you accept and what evidence you reject.

The relevance of the first three Defendants having no previous convictions

You should consider this in 2 different ways:

- a) It is relevant to your assessment of their credibility as witnesses. Someone with previous criminal convictions might be considered less likely to be a truthful witness. Because they have not got criminal records you should take that into account in considering whether they are therefore more likely to have been truthful to you.
- b) Would someone who has reached their ages without a criminal record have started offending now? It is relevant to your assessment of them because it may support the argument that they are not the sort of people who have a tendency to be law breakers.

These are not defences, because obviously no one would otherwise ever be convicted for a first time if they could rely on these two points as an answer to an allegation. You must take them into account, but it is for you to decide how much weight you give them.

Comments

The Prosecution and Defence barristers will make comments to you in their speeches, seeking to convince you of the strengths of elements in their cases and weaknesses in the other side's case.

If those comments and arguments help you then please take them into account in your own thinking about the evidence, but you have to decide this case on the basis of your assessment of the evidence and not on the basis of anyone else's.

It is possible that you may sense that I have a view about some parts of the evidence. I do not intend to influence your views one way or the other and I don't intend to do so in this summing-up. You alone are the judges of the facts.

Evidence

What I will do is to pick out what I think may be the most useful and relevant parts of my notes to remind you of the evidence.

Because you are the judges of the evidence, not me, take no notice of any things I remind you about which you think are irrelevant.

Equally, if you remember things which I do not mention, pay attention to what you recall.

Final practical points

Don't suffer in silence - if you need to be reminded of any of the evidence that has been given (remembering there cannot be any further evidence presented to you), or you need me to explain some part of the law more clearly, just send me a note and I will do what I can to help.

If some of you need the occasional break for a smoke then arrangements will be made for that.

Take all your papers with you when you go out to decide on your verdicts. There is no time pressure on you. If you are still discussing the evidence at around 4:30 and have not reached your verdicts I will have you back into court then and send you home overnight with some further legal directions. We will then resume again the next morning.