

IN THE WESTMINSTER MAGISTRATES COURT

BETWEEN

Crown Prosecution Service

V

Christopher Cole


JUDGMENT

1. Christopher Cole faces one allegation that on **13th September 2011** at Custom House DLR Station without lawful excuse, he damaged an advertising billboard by graffiti to a value estimated at £545 belonging to Docklands Light Railway intending to destroy or damage such property or being reckless as to whether such property would be destroyed or damaged : contrary to s. 1 (1) and 4 of the **Criminal Damage Act 1971**.
2. Mr Cole pleaded "Not Guilty" and the full hearing took place at this Court on **10th May 2012**. Mr Cole was unrepresented and the Crown Prosecution Service (C.P.S.) was represented by Mr Agoro.
3. There was no challenge to the prosecution case, in that the statements of all the prosecution witnesses has been duly served and there was no objection to those statements being read in accordance with the provisions of s. 9 and s.10 **Criminal Justice Act 1967**.
4. It is the CPS's case that Mr Cole, at approximately 10.05 hours on the day in question, by means of a red paint canister sprayed the words "Stop Arms Trade DSEi Kills " across 4 glass panels approximately 4 metres long and 1 foot tall . The damage was said to have been caused to posters for an aviation company (EADS) at Custom House during an arms show that was being hosted there.
5. Mr Cole maintains that he had a lawful excuse for the damage that he accepts that he caused. He gave evidence and explained that the arms fair in question is an event that takes place every 2 years, the last such event having been held in 2009. It lasts some 4 days and is said to be a well attended event. Mr Cole added that he had attended a silent vigil the night before (ie 12th September 2011) to remember those who had lost their lives or had been otherwise affected as a result of armed conflicts around the world. The next morning (ie 13th September 2011) he said that he decided to disrupt the trade fair at Custom House because he believed that unlawful activities would be occurring at the fair, in that there would be breaches of UK domestic law by some of the stall holders attending the fair.
6. Mr Cole added that he went to Tower Hill where he met a large number of people who were obtaining tickets for the fair. I am told that it is an event that is not open to members of the public other than by invitation. Mr Cole told me

that he is aware of his right to lobby Members of Parliament as well as other forms of peaceful protest, which, indeed he says he has pursued. He felt the need however, on this occasion, to act in the way he did, to disrupt the fair and thereby to try to prevent the unlawful activity which he believed would be carried on within the fair itself. He said that in previous recent years, certain stall holders have acted outside the UK domestic criminal law in that they have displayed and/ or advertised items for sale which are Category 1 items without having been granted the necessary UK Government licence. He did make the comment in cross-examination that he "had to break the law in order to uphold the law".

7. Although there is a body of jurisprudence that states that the court should not allow expert evidence to deal with points raised akin to those in this case, I did allow Mr Cole to call Mr Oliver Sprague to give evidence on his behalf. Mr Sprague is the Programme Director of Arms Control and Policing at Amnesty International. He has worked on technical aspects of UK arms export controls for approximately 18 years. He gave evidence in respect of the activities at the arms fair held at DSEi, which he says demonstrate violations of UK export controls. Mr Sprague had received an invitation to the 2011 event. He adopted the contents of his report dated January 2012. There were 3 stallholders who he said were violating the UK export controls as they were said to have been advertising Category 1 items without having the appropriate UK Government licence. Mr Sprague added that when this was brought to the attention of the event organisers the 3 stalls were quickly closed down. He advised that although investigations carried out by HM Revenue and Customs ^{are} on-going, no prosecutions have, to date, been brought against anyone in relation to the offending stalls. He added that there were up to 200 stalls in all operating at the fair. He acknowledged that it would not have been possible to know whether there were any offending companies operating unless or until access to the fair had been gained.
8. Mr Cole could not have known whether the activities of any of the stallholders at the fair in September 2011 might have contravened any export controls unless or until he had access to the fair. He did not have an invitation and accepts that he would not have been allowed to enter the fair. His actions were predicated on the assumption – for that is what it must have been – that such violations would take place at the fair.
9. Mr Cole maintains that his actions were consistent with his defence of necessity and / or duress of circumstance. It has long been unclear whether a general defence of necessity actually exists in English law. The courts now recognise a defence of duress of circumstances that achieves many of the same results. Necessity is said to differ from duress in that it is generally conceived as a justified choice between two evils – the evil represented by committing the alleged offence being outweighed by the greater evil which would ensue if the offence were not to be committed. The Law Commission recommended that any general defence of necessity that might exist should be abolished noting that the defence of duress of circumstances is "Much less open to criticism" see **Perka(1984) 13 DLR** , a decision of the **Supreme Court of Canada**.

10. So far as duress of circumstances is concerned the early authorities relate to a series of road traffic cases but the **Court of Appeal in Pommell (1995) 2 Cr App R 607** confirmed that it was potentially available in all crimes save murder, attempted murder and some forms of treason. My attention has also been drawn to the decision in **R v Jones (and others) (2004) EWCA Crim 1981**. The defendants in that case were charged with various counts relating to criminal damage at an operational military airbase. The defence statements were based on the assertion that the UK's actions in preparing for, declaring and waging war in Iraq were unlawful acts which the defendants were attempting to prevent. In that case the Court of Appeal dismissed the Appeals and rejected various issues raised including defences raised – inter alia- of necessity and duress of circumstances. Mr Cole asserts that the decision in Jones has no relevance to his case. I disagree. The judgment in Jones was a comprehensive document and there are features common to both that case and this case involving Mr Cole's. It is, however, in my view, unnecessary for me to go into details thereof for the purposes of my decision.
11. I have carefully considered all the evidence that I have heard as well as the submissions made to me. Even in the event that the defence of necessity were available to Mr Cole (alongside the defence of duress of circumstances) I do not agree that his actions amount to any defence to the charge. Mr Cole says that his actions were designed to disrupt the trade in international arms sales and the unlawful killings that result. I do not accept that his actions in spray painting a hoarding some distance away from the hall itself could have been intended to have had that effect but even if that was his intention, then that does not – in the circumstances of this case- afford Mr Cole a defence of having a lawful excuse for his actions. I am entirely satisfied that the case is made out and the case is proved against him beyond reasonable doubt.



JOHN ZANI
DISRICT JUDGE (M C)
31st MAY 2012