



JUDICIARY OF
ENGLAND AND WALES

THE HON. MR JUSTICE GARNHAM

In Northampton Crown Court
R v McKechnie, Smith, Brocklebank, Mogie, Gibson and Baldwin
31 March 2023

Introduction

1. On 9 February 2023, the six of you, Louis McKechnie, Joshua Smith, Emily Brocklebank, Bethany Mogie, Alasdair Gibson and David Baldwin, were convicted by the jury of causing a public nuisance contrary to section 78(1) and (4) of the Police, Crime, Sentencing and Courts Act 2022. It now falls to me to sentence you.
2. For the purposes of sentencing, I reach conclusions against each of you only when I am sure of those facts. All my findings of facts will be consistent with the verdict of the jury.
3. The events that led to your convictions were explored in great detail during the trial and I need only to summarise them here.

The Facts

4. On 3 July 2022, each of you attended the British Grand Prix at Silverstone. Once there, five of you, Louis McKechnie, Joshua Smith, Emily Brocklebank, Bethany Mogie, and Alasdair Gibson, climbed over fencing and ran across a grass verge onto a section of the track called the Wellington Straight. Four of the five of you, that is all except Mr Smith, were wearing orange “Just Stop Oil” t-shirts; Mr Smith was carrying such a tee -shirt but not wearing it.
5. Shortly before you entered the track, and some distance back from the point you entered it, there had been a serious crash between 3 FI cars competing in the race. One car smashed into the crash barrier and had to be removed by a crane of some sort. As a result there was first a yellow flag, then a red flag displayed by the race officials.

- The effect of the latter was to require vehicles to slow down, to prohibit them from overtaking and to require them to travel around the circuit back to their pit stops.
6. Most of the F1 cars passed you as you crossed the grass verge. You five then sat in a line across the nearside half of the track. One of you, Ms Mogie, had a tube of superglue hidden in her bra. Because of the earlier crash, two F1 cars were delayed entering the Wellington straight. By the time they arrived, you were sat across on the track. They passed you, one shooting sparks as it did so as a result of damage sustained in the crash.
 7. Marshalls then attended the protest and pulled you all from the track. The police then attended and you were arrested. All of this was caught by CCTV, footage of which was played to the jury as part of the Crown's case.
 8. David Baldwin, you were the sixth defendant. By your participation in the run up to this offending and your conduct on the day, you encouraged the others in their protests. You attempted to climb the same chain link fencing but were pulled back by a marshal. Accordingly, you never made it onto the track. However, you had with you at the time an orange JSO T-shirt and an orange JSO flag and you were plainly intending to take part in the same demonstration.
 9. All of you had taken part in a video, recorded on the 2nd of July and posted on Twitter. In that video you indicated your intention to take part in a demonstration during the course of the Grand Prix to highlight what you say is "*the UK Government's inaction in averting the impending climate emergency*".
 10. The effect of your actions was to create an obvious risk of danger. You deny that, but in my judgment the jury was entirely right to reach that conclusion. The danger was of a collision between one or more of you and the F1 cars still being driven around the track and of a collision between a marshal coming onto the track to deal with you and misjudging his or her proximity to the passing vehicles.
 11. I reject, as the jury rejected, your assertion that you had properly assessed the risks and had so managed the protest as to eliminate such risks. You were, in my view, kidding yourselves, pretending an expertise you did not have. For all your high-minded protestations, none of you were qualified enough or experienced enough properly to assess the risk to which you and others were exposed by your actions. However I accept that you exposed the public to these risks as a result of your recklessness; you did not set out deliberately to expose them to that risk, even though that was the result of your actions.

12. The fact that your actions exposed others to the risk of injury or death distinguishes this case from other protest cases, where the actions of protesters cause inconvenience to road users or minor damage to property or constitute trespass. That difference will be reflected in the sentences I impose.

Previous Convictions

13. For none of you was this a first offence. In fact, to a greater or lesser extent, this was the latest in a series of protest offences.

14. **Louis McKechnie** you are now 22 years old. You have six previous convictions:

- (i) On 17/5/22 - for willfully obstructing free passage on the highway.
- (ii) On 24/5/22 – a conviction for aggravated trespass.
- (iii) On 9/6/22 - you willfully obstructed free passage on the highway. The facts were that on 13th October 2021, you and others attempted to glue yourselves to the highway at junction 31 of the M25 roundabout.
- (iv) On 23/6/22 - failing to leave a location when directed to do so by an officer.
- (v) On 30/9/22– you were convicted of invading a football match & aggravated trespass. The facts were that on 17/3/22 you entered the playing field during a Everton v Newcastle football match at Goodison Park and zip tied yourself by the neck to the goal post, causing considerable disruption to the match.
- (vi) On 30/6/22 – criminal damage. With Ms Brocklebank whilst wearing orange “Just Stop Oil” t-shirts, you superglued your hands to the frame of a Van Gogh painting on display at London’s Courtauld Gallery. The painting was valued at £70 million; the costs of the damage caused to the frame was found to be £2200. For that offence, which was committed only a few days before the current offence, you were sentenced to 21 days imprisonment.

15. **Joshua Smith** you are now 30yo. You have three previous convictions

- (i) 18/4/22 - aggravated trespass.
- (ii) On 3/5/22 - willfully obstructing free passage of a highway. This offence was committed on 4 October 2021 at the Blackwall Tunnel. Those two offences predated the present offence.

- (iii) On 20/3/22– going onto an area adjacent to the playing area to which spectators were not generally admitted at a Premier League football match.

16. **Emily Brocklebank** you are now 24 yo. You have five previous convictions. The first three convictions were all for offences committed in October 2021 for willfully obstructing free passage along a highway. That occurred as part of an “Insulate Britain” protest. These offences involved you and others glue-ing yourselves to highways. Your fourth conviction was for another offence of willfully obstructing free passage which took place in November 2021.

17. Your most recent previous conviction was the one in June 2022 to which I have already referred. This involved you and McKechnie super-gluing your hands to the frame of the Van Gogh painting at the Courtauld Gallery. That was just a few days before this offence. You were sentenced to 21 days imprisonment suspended for 6 months. As the writer of the PSR put it in relation to you, “There is an established pattern of reckless behaviour through attending protests.”

18. **Bethany Mogie** you are now 40yo and have four previous convictions for six offences:

- (i) On 6/5/22 - willfully obstructing free passage of a highway. You sat in the middle of a road superglued to another protestor and obstructed the highway. (this is the same incident in May 2022 as that involving Brocklebank and Smith).
- (ii) On 28/6/22 - you willfully obstructing free passage of a highway. The facts were that between 3rd and 6th September 2020, you and others superglued and handcuffed themselves together, blocking the entrance of a newspaper printing company.
- (iii) On 6/9/22 you were convicted of 2 counts of willfully obstructing free passage of a highway. Those offences occurred in November 2021.
- (iv) On 28/11/22 you were convicted of 2 counts of aggravated trespass. Those offences were committed in April 2022.

19. You were subject to West Sussex Magistrates’ Court bail at the time of this offence.

20. **Alasdair Gibson** you are now 22yo. You have three previous convictions

- (i) 23/6/22 at Dumbarton Sherriff Court - failing to leave a location when directed to do so by an officer. (That conviction arose out of the same incident as that involving McKechnie). That offence predated the present offence. Then
- (ii) On 2/12/22– aggravated trespass
- (iii) Aggravated trespass committed on 10 April 2022.

21. There is here, as the writer of the PSR puts it, a clear established pattern of offending linked to antisocial behaviour.

22. **David Baldwin**, you are now 47yo. You have one previous convictions and one caution. The caution followed an occasion on 1st May 2021 when you sat in the road with a peace flag and superglued you hands to the road. The conviction for willfully obstructing a highway followed an event on 14 April 2022 when, as part of an Extension rebellion protest, you glued yourself into a vehicle positioned to obstruct traffic near marble arch in London.

Sentencing

23. The maximum sentence for this offence, on indictment, is 10 years imprisonment.

There are no sentencing council guidelines for this offence of public nuisance and, it being a recently introduced offence, there is no CACD guideline case.

24. I've had regard to [General Guidelines: Overarching Principles](#) and to the [Sentencing Council Guidelines for the Imposition of Community and Custodial Sentences](#).

25. It is no part of my function to adjudicate on the merits of your protest; my task is simply to apply the law.

26. I have had my attention drawn to the HL case of *Margaret Jones* [2007] 1 AC 136 and the CACD decisions in *Richard Roberts* [2018] EWCA Crim 2739 and *James Hugh Brown* [2022] EWCA Crim 6, all of which I have read and considered. As to those authorities, I make clear now that I will take firmly into account your conscientious motives as reducing your culpability. I note that the CACD has held that a custodial sentence might be appropriate in the context of peaceful protest amounting to public nuisance, and that was in circumstances where it was not an element of the offence that the nuisance put a section of the public at risk of harm.

27. It is necessary for me to identify first, the elements of the offence, second, other features relevant to culpability and harm and third, matters that aggravate and mitigate the offending. I shall be careful not to double count.
28. The risk of serious harm and the fact that it was a section of the public that were exposed to that risk are **elements of the offence**. They do not count again as aggravating features but they mean that my starting point must be much higher than would be the case if this was a charge of aggravated trespass or common law public nuisance without such features.
29. Relevant to the assessment of **culpability** of each of you, when I fix on my starting point, is the fact that this was a deliberate and targeted group action intending to cause in your words at the time “*maximum disruption*” to the F1 Grand Prix. However, I accept the submission first, that what was really meant by that expression was “*maximum attention*” rather than maximum disruption; and second that in fact the disruption to the Grand Prix was slight. The race had already stopped because of the earlier accident and that took longer to clear than did your removal from the track. I note from the victim impact statements, however, that the effect of your action was that staff were diverted from the work they should have been doing to deal with you and that caused difficulty and delay for the Silverstone authorities. I note also that this incident has had some psychological effect on one of those in charge of the marshals.
30. In addition, relevant to culpability is the fact that the five of you persevered in your planned action once you got over the crash barrier, despite F1 cars still passing you at speed. When it became clear that there were still vehicles to pass you, you did not come off the track but continued your protest. They were not travelling at full speed because the red flag had been signalled, but they were still travelling quickly as is evident from the CCTV. You five sat on the track and remained sitting on the track whilst the two final F1 cars passed you.
31. You, Baldwin, did not enter the racetrack, but that was not by choice but because you were prevented from doing so by a marshal. Had you not been stopped, I have no doubt you would have entered the track. What matters in your case however is that your participation encouraged the others to conduct this offence.
32. I accept, however, that the motive of each of you was not to cause harm but instead to voice your concerns about climate change. As I have said, the lack of a malign motive diminishes culpability and does so significantly.
33. The following is relevant to an assessment of **harm**:

- The risk you created was the risk of the most serious category of harm, namely death or serious personal injury. (This is not a case of serious annoyance or serious inconvenience).
- However in my judgment the likelihood of harm actually occurring, whilst certainly present, was relatively modest.
- The risk was posed to a “section of the public”. A not insignificant number of people were put at risk, including you yourselves, the F1 drivers and the volunteer marshals.

34. Following the General Guidelines: Overarching Principles, the following aggravating factors are correctly identified by the prosecution: namely relevant previous convictions as I have already noted and in respect of four of you, all except Gibson and Baldwin, you were subject to court bail or police bail. I regard that as a serious aggravating factor. I will particularise these matters further as appropriate when I come to sentence you individually.

35. The following additional aggravating factors are applicable to all of you:

- (i) The offence was, on your own cases, carefully planned. It is said on your behalves that it was planned to avoid risk and I accept that was part of your motivation; but it was also planned as a deliberate breach of the law.
- (ii) The offences were committed in the presence of others - but that is integral to offence;
- (iii) You acted as you did despite warnings – namely the warning signs at the trackside and the press release expressing the warning that going onto a live racetrack is extremely dangerous and would put lives at risk.

36. I take account of the mitigation on which each of you rely. I will itemize some of the individual mitigation in a moment but I note here the principle piece of mitigation on which you all rely, namely that the only reason you took part in these actions was because of your genuine and deeply held belief that there is a climate emergency which requires immediate attention and action. You all say you had tried various form of lawful protest but that had not produced what you regard as adequate responses. You all say you had spent time and effort planning this protest to ensure it was as safe as possible.

37. You say you had planned to go onto the track soon after the race had begun, but after the vehicles had all passed, and that it was unfortunate that the earlier accident meant

two cars had not passed before you began the protest. You point out that the five of you who made it to the track, sat in a line that ran across only the nearside half of the track leaving sufficient room for vehicles to pass if that should prove necessary and that four of you were wearing bright orange t-shirts so that you would be easily visible. You point out that none of you resisted removal or arrest. You say that, as a result of the time at which you staged the protest and the speed of your removal, the impact on the events at Silverstone that day was minimal. You remind me that Silverstone knew that a protest was likely and were able to formulate plans to deal with it. I bear all of that in mind.

38. I also take into account that none of you have committed any offence since the commission of this offence and, as I noted during the trial, all six of you behaved in an exemplary manner during the trial. All of you except Ms Mogie have said that, after the experience of this case, none of you intend to take any further part in unlawful protest and will confine your activities to lawful protest. I regard that as significant mitigation. As to Ms Mogie, I do not regard her decision not to give such an undertaking as an aggravating feature; it is neutral.

39. I take into account all that is said on your behalves both in writing and in oral submissions. In very short summary

40. Louis McKECHNIE:

- The offence was committed as part of a protest on which you have strong and genuine beliefs
- Aside from the protesting offences, you are a man of good character
- I note what your referees say about your being a kind and decent man with a real capacity to contribute to society.
- You are a relatively young man and I have regard to your youth.
- I granted you bail during the trial and you honoured the conditions of that bail.
- In custody of 7months.

41. Joshua SMITH:

- Your father is in poor health and you have been acting as his carer
- You have already served a period of over 5 months in custody
- You have been subject to strict terms of bail since leaving custody

42. Emily BROCKLEBANK:

- I note the very significant and positive community activities you take part in
- I note the high degree of altruism you display in your life generally, notably in your decision to donate a kidney to someone unknown to you who needs one
- I accept that you are a productive member of society
- I note that you have been under curfew for 224 days.

43. Bethany MOGIE

- You are the mother of 4 boys
- I note that you have been motivated to act as you have from a concern for their future and the future of all children
- I note that you have been on tagged curfew for the same period – 224 days

44. Alasdair GIBSON:

- Having read your character references, I take account of your good character, aside from protest offending
- I note your age and take account of that.
- I note your real and persisting medical condition
- You have been subject to electronic tagging curfew for 243 days.

45. David BALDWIN

- You are a married man with two children
- You have been active, positively, in your community
- I recognise that your involvement in this case was secondary, in that you did not get onto the track yourself. I accept that you anticipated that your co-defendants would only go onto the track once all the cars had passed and the red flag signalled.
- Having read your character references, I take account of your good character, aside from protest offending
- You have a history of mental and physical health difficulties
- This offence has resulted in real difficulties for you in your marriage, family and home life

46. I have read the PSR prepared for each of you. I am grateful to the Probation Service for the work that has obviously gone into their preparation.

47. I make clear now that, in my view, the custody threshold is comfortably passed in each of your cases. Critical to that decision is that fact that your conduct created a risk of serious injury or death. That distinguishes this case from all the others of which any of you have previously been convicted. This was not trespass or obstruction of the highway or criminal damage. To put it colloquially, this was offending in a different league because your conduct threatened harm to others.

48. I also make clear that I will not be imposing the same sentence on each of you. The sentence I impose reflects your individual history and your individual circumstances

49. I turn then to address the appropriate sentence in each of your cases.

50. **First you, Louis McKECHNIE. Stand up:**

- By the time of this offence, you had already committed a number of previous offences, notably the criminal damage at the art gallery just a few days earlier.
- At the time of the present offence, you were subject to Bail granted at Southwark Crown Court; police bail by Essex police; and bail from West Sussex Magistrates' Court. So this offence was committed whilst you were on bail for each of those matters. That is a significantly aggravating feature.
- In my judgment, it is clear that you took a leading role in this offence, both in its planning and on the day. It was you who scoped-out Silverstone in advance by an earlier visit; it was you who, in the video to publicise this event, described creating an action that would "*look spectacular in order to generate media attention*"; and in my view you were at the heart of the arrangements on 3 July.
- I take account of the mitigating factors to which I have referred, but in my judgment, this offence is so serious that only a custodial sentence can be justified.
- However, I am satisfied from what I have seen and heard of you that in your case there is a realistic prospect of rehabilitation. You have strong personal mitigation. .

- **In those circumstances I intend to impose a suspended sentence on you. I impose a sentence of 12 months imprisonment but I suspend that sentence for 24 months.**
- If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back to court and it is likely that this sentence will be brought into operation either in full or in part.
- In addition, I impose an unpaid work requirement of 60 hours to be performed over the next 12 months.

51. Joshua SMITH:

- You too had committed offences before this one
- At the time of the commission of this offence, you were subject to police bail at the time of this offence.
- I take account of the mitigating factors to which I have referred
- In your case, I am willing to accept the recommendations in the PSR. I impose on you a 12 month community sentence with 10 Rehabilitation Activity requirements days and 120 hours unpaid work requirement.

52. Emily BROCKLEBANK:

- By the time of this offence, you already had committed a number of previous offences, notably the criminal damage at the art gallery a few days earlier for which you subsequently received a suspended prison sentence.
- You continued behaving in this way after this offence.
- You have said that you do not intend continuing to continue break the law to mount protests.
- I take account of the mitigating factors to which I have referred but in my view the custody threshold had been passed in your case.
- However, I am satisfied from what I have seen and heard of you that in your case there is a realistic prospect of rehabilitation. You have strong personal mitigation.

- **In those circumstances I intend to impose a suspended sentence on you. I impose a sentence of 6 months imprisonment but I suspend that sentence for 24 months.**
- If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back to court and it is likely that this sentence will be brought into operation either in full or in part.

53. Bethany MOGIE

- You too had committed offences before this one
- You were on bail at the time of this offence.
- You took superglue with you and I have no doubt would have used it if the opportunity had arisen.
- I take account of the mitigating factors to which I have referred but in my view the custody threshold had been passed in your case.
- However, I am satisfied from what I have seen and heard of you that in your case there is a realistic prospect of rehabilitation. You have strong personal mitigation. And Immediate custody will have a significant harmful impact upon your children.
- **In those circumstances I intend to impose a suspended sentence on you. I impose a sentence of 6 months imprisonment but I suspend that sentence for 24 months.**
- If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back to court and it is likely that this sentence will be brought into operation either in full or in part.

54. Alasdair GIBSON:

- You too had committed offences before this one
- I take account of the mitigating factors to which I have referred
- In your case, I am willing to accept the recommendations in the PSR. I impose on you a 12 month community order with requirements to perform 120 hours unpaid work.

55. David BALDWIN

- You had one previous convictions and one previous caution.
- I take account of the mitigating factors to which I have referred
- In your case, I am willing to accept the recommendations in the PSR?. I impose on you a 12 month community order, with 20 RAR days including a 6 month Mental health treatment requirements.

56. In addition to those sentences, each defendant will pay the victim statutory surcharge.

57. I am not going to make a costs order.