



[2024] EWCA Crim 243

**ATTORNEY GENERAL'S REFERENCE ON A POINT OF LAW  
(No. 1 of 2023)**

**Pursuant to section 36 of the Criminal Justice Act 1972**

**SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL DIVISION, ON 18 March  
2024 (The Lady Chief Justice, William Davis LJ and Garnham J)**

1. This Reference by the Attorney General concerns the scope and effect of the defence contained within section 5(2)(a) of the Criminal Damage Act 1971. This section provides, amongst other things, for a defence of “lawful excuse” to someone charged with criminal damage if the person honestly believes at the time of the damage that the owner of the property would have consented to the damage “*if he or they had known of the...damage and its circumstances*”. [1]
2. The defence has been deployed recently in protest cases.

*Factual Background*

3. C and her co-accused were members of a political group known as “Beyond Politics”, which is now known as “Burning Pink”. Burning Pink asserts that climate change is an emergency and that anything short of immediate and substantial change will lead to terrible consequences for the planet and the human race. [5]
4. On 21 July 2020 C, together with others, threw pink paint at the offices of Greenpeace, Amnesty International, Christian Aid and Friends of the Earth. They also attached copies of letters drawing attention to the climate emergency and the culpable inaction of the organisations involved. The costs of repairs totalled around £16,500. [6] On 13<sup>th</sup> August 2020, C and others undertook similar action at the headquarters of the Conservative Party, the Labour Party, the Liberal Democrats and the Green Party. The costs of repairs totalled around £20,000. [7]
5. C and her co-accused were charged with conspiracy to damage property. C relied on the defence that at the time of the damage she believed that the owners of the properties would have consented to the damage if they had known of the damage and its circumstances. She gave evidence at trial. Her case was that she believed that the occupiers of the premises would have consented to the damage had they been aware that it was carried out to alert those responsible for the premises to the nature and extent of man-made climate change.

6. C was acquitted by the jury (as were her co-accused). The Attorney General’s Reference (and the decision of the Court) does not in any way affect these acquittals. [28]

*Circumstances of the Damage (Question One)*

7. The first question of law raised by the Reference is whether the “circumstances” of the damage referred to in section 5(2)(a) included the merits, urgency or importance of any matter about which a defendant was protesting. [3]
8. The Court holds that the “circumstances” of the damage have to be linked directly to the damage. They might include, for example, the time, place and extent of the damage. In a protest case, they would include the fact that the damage was caused as part of a protest. [44], [46], [65]
9. But the “circumstances” would not include the political or philosophical beliefs of the person causing the damage. They would not include the reasoning or wider motivation of the defendant. Those matters are too remote from the damage. [44], [48] Evidence from the defendant about the facts of or effects of climate change would be inadmissible. [48]

*Removing a defence from the jury (Question Two)*

10. The second question asks whether the trial judge should have withdrawn C’s defence of lawful excuse from the jury either before the case was opened or after the evidence was concluded. [3]
11. The Court declines to answer this question on the facts. But it confirms, as a matter of general principle, that the correct position remains that stated in *Attorney General’s Reference* (No.1 of 2022) [2022] EWCA Crim 1259; [2023] 1 Cr App R 1 at [118]: “a judge may withdraw an issue from the jury if no reasonable jury properly directed could reach a particular conclusion’. A judge must exercise considerable caution before taking that step, particularly where the defence goes to the defendant’s state of mind. [63], [64]

**Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal’s decision. It does not form part of the reasons for the decision. The full judgment ([2024] EWCA Civ is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>**