

IN THE BRIGHTON MAGISTRATES' COURT

BETWEEN

R

v

Helen Skilton, Margaret Clifford and Mary Stuart

Case no: 47CC2179924

Decision and Reasons of DJ Kelly

(Verdict delivered and sentence imposed at a 2pm hearing at Brighton Magistrates' Court on 27th February 2025 following evidence and legal submissions heard on 3rd February 2025)

Introduction:

1. I am concerned with an incident that took place shortly after midnight on Saturday 17th August 2024 when the three defendants are accused of causing criminal damage to the constituency office of Peter Kyle MP. On the night in question, the defendants accept that they used marker pens and a varnish to mark the windows of Mr Kyle's offices with expressions of protest at the conflict in Gaza. However, the defendants' case is that their conduct engages their right under Article 10 of the European Convention on Human Rights – their right to Freedom of Expression - and that to convict them of criminal damage in the circumstances of this case would amount to a disproportionate interference with that Convention right.
2. Although the financial value of the damage was not quantified, it was accepted by the prosecution that this was below the £5000 threshold. This means that it was an offence triable only in the magistrates' court.

The evidence:

3. During the trial, which took place on 3rd February 2025, I heard oral evidence from Mr Kyle and his head of staff, Mr Christopher Henry, as well as from PC Craig Lees and PC William Starr, the police officers who arrested the defendants. I was shown CCTV footage taken from inside Mr Kyle's constituency office showing the defendants marking the windows. I also heard oral evidence from the three defendants, Ms Margaret Clifford, Ms Helen Skilton and Ms Mary Stuart. The rest of the evidence was read by agreement. This included the witness statement of Domino Moore, another member of Mr Kyle's staff, and a summary of the answers given by the three defendants in their police interviews.

The factual background:

4. The facts in this case are largely agreed between prosecution and defence. At around 00:30 hours in the early morning of Saturday 17th August 2024 the police were alerted by members of the public to the fact that three individuals appeared to have marked the windows of the offices of Mr Kyle with graffiti. The offices are situated in a prominent location on Church Road, which is Hove's main street and home to many shops, restaurants, cafes and other businesses. The premises has two large glass windows at the front.
5. There is no dispute that the defendants, acting together, had written on the glass windows the words "stop killing children" and "stop arming Israel". They had also marked the windows

with images of a person throwing flowers using templates that replicate images created by the street artist and political activist Banksy. They were wearing covid-style face masks at the time they marked the windows. The items that were used to mark the windows were seized and photographed. There seems to be no dispute that the words were written with window pens of the type that shop owners might, for example, use to write their opening hours or other information of use to their customers. In addition, the defendants had then sprayed over the writing with an artist's varnish.

6. The police attended the scene very quickly and located the three defendants nearby. Ms Stuart was carrying a step ladder and a bag containing marker pens. Ms Skilton was carrying the spray canisters, masking tape, face masks and gloves. She also had an art template of images created by the street artist Banksy. Ms Clifford was also present with the other two defendants.
7. The defendants were spoken to by police officers. They did not deny that they were the individuals responsible for marking the windows. It later became apparent that their actions had been captured on CCTV. Ms Stuart accepts that she was the person who marked the windows with the words "stop killing children" and "stop arming Israel" using a brand of marker pens known as "POSCA" pens. She said that she had previously used this sort of pen for window markings when she had been involved in running a shoe shop. Ms Clifford said that her primary role was to hold the ladder, whilst Ms Skilton accepted that she had used the stencils to recreate the Banksy images on the windows.
8. The defendants were arrested and taken to the police station. They were each interviewed under caution and each admitted to being involved in marking the windows. They each said that they had involved themselves in this activity because they were so upset and angered by the political and humanitarian circumstances surrounding the Gaza conflict and they wanted to send a message to Mr Kyle, who, as an

MP and cabinet minister, they believed was in a position to bring about a change in government policy.

9. Whilst the defendants were taken to police custody, news of the graffiti on the windows quickly reached Mr Kyle and his staff. I heard evidence from Mr Christopher Henry, Mr Kyle's head of operations, who said that he set about trying to remove the writing later that same morning.
10. Mr Henry explained that he believed it was important to remove the words as quickly as possible because of their potentially inflammatory nature. He said that Mr Kyle does use the services of a professional window cleaner once a week, but he was not sure that the window cleaner would have been available at the weekend. Mr Henry agreed that he may have been able to get an alternative professional cleaner had he tried to do so. In any event, Mr Henry said that he set about removing the writing and images himself and that it took a significant portion of the day to achieve.
11. Mr Henry said that he initially tried using soap and water and a butter knife to remove the graffiti but that this hadn't worked. His attempt to use white spirit was also unsuccessful. However, he said that he then located a tool – a type of scraper – that had been left behind by a previous workman. He said that after several hours of work on what was a particularly hot summer's day, he managed to use the tool to scrape off the writing so that the words were no longer legible. He had to use a ladder to reach the higher markings. Mr Henry believed that he had worked on the window between around 11.30am and 4pm. He said that even after his efforts that day some glue residue remained behind on the windows. This was tackled by another member of Mr Kyle's team, Ms Domino Moore, on the Monday morning. Ms Moore's statement was read to me. She said it took her between half an hour and one hour to clean the remaining residue off the windows.

12. During cross-examination, it was suggested to Mr Henry that he may have exaggerated the length of time it had taken him to remove the markings or that he had made unnecessarily heavy work of the task. Mr Henry disputed this. I cannot be sure of the exact length of time it took Mr Henry to remove the words and images, nor do I discount the possibility that there may well exist far more effective methods or equipment for carrying out such a task. However, I find that Mr Henry gave a broadly accurate description of the manner and timing of the process he in fact adopted on that Saturday. I found Mr Henry to be a straightforward witness and I note that the timing he gave included the attempts he had made to remove the markings by other methods before resorting to use of the scraper.

The applicable law:

13. Section 1 of the Criminal Damage Act provides that:

(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

Section 5(2) provides:

“(2) A person charged with an offence to which this section applies, shall, whether or not he would be treated for the purposes of this Act as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question

had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances”

14. The burden of proof rests upon the prosecution to prove to the criminal standard that the defendants:
 - a) Destroyed or damaged property.
 - b) That they intended to destroy or damage the property or were reckless as to whether the property would be damaged or destroyed.
 - c) That the defendants did not have a lawful excuse.
15. I direct myself that my verdicts need not be the same for each defendant although, given that the defendants accept that they acted together, this is the sort of case where they are likely to be.
16. I have heard that each of the three defendants is a person of good character. They have no previous convictions or cautions recorded against them. I remind myself that good character is not a defence to the charge. However, evidence of good character counts in a defendant's favour in two ways: firstly, a defendant's good character supports their credibility and so is something which I should take into account when deciding whether I believe their evidence; and, secondly, that a defendant's good character may mean that they are less likely to have committed the offence with which they are charged. It is for me to decide what weight to give to the evidence of good character, taking into account everything that I have heard about the defendant in question. In the circumstances of this case, I find that evidence of the defendants' good character has limited relevance. This is because there is no dispute about the key facts in this case – the defendants accept that they caused the damage concerned. There is also no challenge as to the sincerity of their beliefs and their genuine concern over the conflict in Gaza. I am quite satisfied that they were utterly sincere in

their beliefs. However, this case really turns on matters of law.

Does the damage amount to “criminal damage”?

17. In *Morphitis v Salmon* [1990] Crim LR 49, the court held that whether “criminal damage” is caused is a matter of fact and degree. It was confirmed that the term includes not only permanent or temporary physical harm but also permanent or temporary impairment of value or usefulness. This approach was endorsed by the Court of Appeal in *R v Whitely* [1991] 93 Cr App R 25, where a computer disc was held to have been damaged by the deletion and addition of files which was said to be “an impairment to the value or usefulness of the disc to the owner.” Other examples of where relatively minor or transient damage has nevertheless been found by the higher courts to amount to criminal damage are *Roe v Kingerlee* [1986] Crim L R 735, a case where mud graffiti on a police cell wall was found to amount to criminal damage; *R v Fiak* [2005] EWCA Crim 2381, a case where it was held that soaking a blanket and flooding three cells with water constituted “damage”; and *Hardman v Chief Constable of Avon v Somerset* [1986] Crim LR 330 where water soluble whitewash used for paintings on a pavement had caused damage even though it would be washed away by rain over time.
18. In the present case, as previously stated, Mr Henry’s evidence was that it took him several hours on a particularly hot day to remove the writing from the window and that his attempt to use a butter knife, soapy water and white spirit had failed. He said that the difficulty in removing the writing appeared to be caused not by the marker pens themselves, but by the varnish substance that had been sprayed over the writing and images. Even after Mr Henry’s significant efforts to remove the markings on the Saturday, there remained

patches of gluey residue on the windows which were further tackled by Ms Moore on the Monday morning.

19. Having considered these circumstances in light of the relevant case law, I find that I am sure that the markings to the windows of Mr Kyle's constituency office were significant enough to sustain a charge of criminal damage. It required a significant amount of time and effort to remove the graffiti from the windows. Whether or not Mr Henry could theoretically have sought out a professional cleaner, or tried to locate a more effective tool to scrape off the writing and images, the fact is that it did take him a significant amount of effort to remove them. It took several hours of his time on a hot weekend, time that he could otherwise have devoted to other matters. The damage was also of a nature where it affected the appearance of the window in a meaningful way. An MP's office is a sensitive location where the attention of members of the community is likely to be particularly drawn and where the messaging placed on the window is likely to be the subject of significant thought. Given the political sensitivity surrounding the Gaza conflict and the fact that Mr Kyle represents a community that includes people with a diverse range of views on the conflict, it is reasonable that Mr Kyle and his team would have considered it necessary to remove the markings as a matter of urgency and without researching more efficient and effective tools and equipment for doing so, or indeed the possibility of recruiting a professional cleaner to carry out the task.

20. As part of the evidence, I was shown a video of an experiment carried out by the defendants on 21st January 2025 in which they met up at the home of Ms Clifford and sought to recreate the sort of markings that they had left on Mr Kyle's windows. They said that they had used the same window pens and varnish to leave lettering on a glass window at Ms Clifford's home. Having left the markings to dry for around 18 hours, Ms Stuart then used a scraper tool to remove them. She removed the writing in approximately two and a half minutes - far more quickly than the time taken for

Mr Henry to remove the writing and images from Mr Kyle's windows. However, I can attach limited weight to this experiment given that it was not carried out in controlled conditions by an independent expert and the tool used by Ms Stuart was not the same sort of tool that Mr Henry happened to locate in Mr Kyle's offices. Those who chose to graffiti property cannot assume that the owner of the property will have to hand the most effective equipment for removing it. In any event, even if Mr Henry might have been able to remove the writing from Mr Kyle's window at a significantly greater speed than he did, I would nevertheless find that such markings amounted to "damage" for the purposes of s1 Criminal Damage Act.

Was the damage caused intentionally or recklessly?

21. I accept that the defendants did not intend to cause serious or permanent damage to the windows. Nevertheless, the actions taken by the defendants to mark the windows were quite intentional. The defendants themselves said that they had given significant thought to the words and images that they would place on the windows and the materials that they would use to do so. There was nothing accidental about their actions. They also decided to spray over the writing pens with an artist's varnish that was used for the very purpose of making the writing and images more enduring so that they couldn't simply be washed away by any rain that fell, or wiped away by someone's clothing as they brushed past the windows. If the defendants had intended for the markings to be wholly transient and trivial and capable of being wiped away effortlessly, I find that they would not have used the varnish over the top of the writing and images.

Do the defendants have a lawful excuse?

22. The higher courts have recognised that there are circumstances in which the exercise of rights under the European Convention on Human Rights (‘the Convention’) can amount to a “lawful excuse” for causing what would otherwise be criminal damage. This is often in circumstances where the damage in question has been caused to public property in the context of some form of protest in which the accused is purporting to exercise their rights under Article 9 (Freedom of Thought and Conscience); Article 10 (Freedom of Expression) and Articles 11 (Freedom of Assembly). These are qualified rights rather than absolute rights and, in circumstances where these Convention rights are engaged, the court must conduct the sort of proportionality balancing exercise outlined in cases such as *DPP v Ziegler* [2021] UKSC 23, and consider whether a conviction would amount to a disproportionate interference with those rights when balanced against other legitimate aims. But it is certainly not the case that every instance in which criminal damage occurs in the context of a protest will engage the defendant’s Convention rights.

23. The circumstances in which Convention rights are engaged and thereby require the trial court to carry out a proportionality assessment were set out in the *Attorney General’s Reference No.1 of 2022* [2022] EWCA Crim 1259. In that case, Lord Burnett drew a distinction between situations where damage was caused to public property in the context of a protest, and situations where the property that is damaged is private property. At paragraph 121 of his judgement, he said:

“Whatever may be the position with public property, we cannot conceive that the Convention could be used to protect from prosecution and conviction those who damage private property to any degree than is other than trivial.”

24. In the present case, I find that the property that was damaged was private property. Although Mr Kyle holds public office, his constituency office at 99 Church Road, Hove, is private property. It has been leased from a private landlady since 2014 and remains under the control of Mr Kyle and his landlady. The public do not have an automatic right of entry into the offices. Mr Kyle and his staff control who enters, with entry generally being by appointment only. Visitors can be refused entry or removed.
25. Mr Henry acknowledged that some, but not all, of the cost of renting the property is met by public funds through Mr Kyle's MP's allowance provided by the Independent Parliamentary Standards Authority. However, even where public funds are used to pay rent on a property, such as in the case of a person whose rent is paid by housing benefit, it does not render their home or office public property for the purposes of criminal damage offences. The critical factor is the legal rights and control over the property, not how it is financed. In this case, I am sure that the targeted premises were private property.
26. This being so, the aforementioned case of *Attorney General's Reference No 1 of 2022* suggests that Convention rights will only be engaged in situations where the damage caused is "trivial". In this case, I am sure that the damage caused by the defendants to the windows was not "trivial". In my judgement, the time and effort required by Mr Henry and his colleague to remove the graffiti goes significantly beyond that which could properly be described as "trivial". Furthermore, I find that the sensitive location at which the damage occurred and the sensitive nature of the graffiti itself adds to its gravity. As an MP's office, the information and presentation of the exterior of the office is significant. Mr Kyle explained in his oral evidence that information would be displayed on the front windows for the benefit of constituents, such as opening hours and how to get an appointment at one of his clinics. The photos and evidence of Mr Kyle also confirm the presence of a TV screen which imparts other specific

messaging to the local community. In that context, the addition by the defendants of words of a highly contentious and sensitive nature undoubtedly altered the nature of that window which is why Mr Henry and Mr Kyle considered that it needed to be removed as a matter of urgency.

27. Mr Kyle also expressed in his evidence the significant impact that the graffiti had on him personally, explaining that he was shocked and distressed by the words written and the inferences that could be drawn from them. He said that he was also concerned about the safety implications they may cause to himself and his staff. Again, I find that such impactful damage is not “trivial”.

28. In short, I find that the time and effort it took to remove the graffiti alone makes the damage well beyond what could properly be described as “trivial” and therefore that the defendant’s Convention rights are not engaged in this case. Accordingly, the need to conduct a proportionality assessment does not arise. I am fortified in reaching such a conclusion by the nature, location and impact – actual and potential – of the graffiti. I therefore conclude that the defendants did not have a lawful excuse for damaging the window based on the exercise of their Convention rights.

29. It was not submitted at trial that any other potentially lawful excuses may apply in this case and I am sure that they do not. In particular, it is clear that Mr Kyle did not consent to the damage for the purposes of section 5(2)(a) of the Criminal Damage Act 1971. I therefore find that the prosecution has proved to the criminal standard all of the elements of the offence of criminal damage, and I find the three defendants guilty as charged.

Sentencing:

Each of the three defendants received the same sentence.

I have placed the offence in Category B2 of the Sentencing Council’s sentencing guidelines on Criminal Damage, which has a starting point of a Band B fine with a range of conditional

discharge up to a low level community order. Having addressed the aggravating and mitigating features of the case, including the defendants' previous good character, I have made all three defendants subject to a conditional discharge of 6 months, and ordered them to pay a statutory surcharge of £26 and a contribution towards prosecution costs of £200.

District Judge Amanda Kelly

BRIGHTON MAGISTRATES' COURT

27.02.2025