Neutral Citation Number: [2025] EWCA Crim 472

Case No: 202400258 B4
202400261 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Isleworth Crown Court
His Honour Judge Edmunds KC
T20197326

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2025

Before :

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE GOSS
and
MR JUSTICE DEXTER DIAS

- -

Between :

LARCH MAXEY	**First Appellant**
JULIAN ROGER HALLAM	**Second Appellant**
- and -	
REX	**Respondent**

- -
- -

Henry Baxland KC and Michael Goold (instructed by **Hodge, Jones and Allen**) for the **First and Second Appellant**
James Curtis KC and Martyn Bowyer (instructed by **Jane Scholefield, CPS Appeals and Review Unit**) for the **Respondent**

Hearing dates: 27 March 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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LORD JUSTICE WILLIAM DAVIS:

Introduction

1. On 15 December 2023 in the Crown Court at Isleworth (HH Judge Edmonds KC, the Recorder of the Royal Borough of Kensington and Chelsea and a jury) Roger Hallam and Dr Larch Maxey were convicted of conspiracy to cause a public nuisance. A third defendant, Michael Lynch-White, pleaded guilty before the start of the trial. A fourth defendant was acquitted.

2. Mr Hallam and Dr Maxey now appeal against their conviction with the leave of the single judge. They argue that the judge should have acceded to a submission at the conclusion of the prosecution case that they had no case to answer. Their submission was that the evidence at that point did not demonstrate a prima facie case that a public nuisance would necessarily have resulted from their planned actions. At the trial they represented themselves. Before us they were represented by Henry Blaxland KC and Michael Goold. Mr Blaxland did not appear in the court below. Mr Goold represented the defendant who was acquitted by the jury. Both before us and at trial the prosecution were represented by James Curtis KC and Martyn Bowyer.

Factual background

3. Mr Hallam and Dr Maxey are active in movements which campaign and protest in relation to climate change. In 2019 they were part of a group called "Heathrow Pause". As the name suggests the group were concerned to halt the proposed expansion of Heathrow Airport involving the creation of a third runway. The appellants planned a protest against the expansion which involved supporters of Heathrow Pause flying drones within the Flight Restriction Zone ("FRZ") of the airport i.e. a zone of 5 kms around the airport. The plan was for as many supporters as possible, potentially in the hundreds, to fly drones on a number of days commencing on 13 September 2019.

4. The appellants published what was called a Safety Protocol. This was said to be the protocol which would be followed by the supporters of Heathrow Pause. It required the use only of toy drones which were not to fly above head height. The protocol stipulated that, whilst the drones were to be flown within the FRZ, no drone was to be flown within the flight path of any aircraft.

5. Flying a drone within the FRZ constituted a breach of the Air Navigation Order 2016 applicable to Heathrow Airport. Between 13 and 18 September 2016 15 people were arrested for flying a drone in breach of the 2016 Order, some of whom were convicted of an offence contrary to the 2016 Order. The number of people who joined in the plan to fly drones within the FRZ fell far short of the number hoped for by Mr Hallam and Dr Maxey. They had been arrested on 12 September 2019 i.e. before any drone had taken to the air. The case against them was that they had planned the protest. It was alleged that their aim was to compel the authorities to close the airport in order to preserve the safety of those using the airport. This was the public nuisance which it was said that they had agreed to cause. In the event the limited number of drone flights meant that there was no effect on flights in and out of Heathrow.

6. It was not in dispute that Mr Hallam and Dr Maxey had agreed a plan involving multiple drone flights within the FRZ at Heathrow. The issue was whether the agreement was

to cause a public nuisance i.e. the closure of the airport. The appellants' case was that the flying of drones was a publicity exercise to draw attention to their campaign against the expansion of Heathrow. They said that they had no intention of closing the airport.

7. At the trial the jury heard evidence from the senior operations manager at Heathrow, Paul Farmer. He had been aware of the planned drone flights. Based on the information in the Safety Protocol he had not considered that it was necessary to close the airport. As the protest began on 13 September 2019 he reassessed the position regularly. Had there been any deviation from the protocol, a serious incident could have resulted. Flying large numbers of drones within the FRZ posed a threat to flight paths into and out of the airport. Drones of the type planned to be used by the protestors were not easy to control. They were not precision devices. An expert on drone operation, Steven Tisseyre, confirmed this description of the potential difficulty in controlling a toy drone. Had one or more drones gone into a critical area, suspension of flights would have been required. Mr Farmer's evidence was supported by an air traffic control manager, Gary Dixon. He agreed that a drone being flown on the outer edge of the FRZ was not a risk to airport operations. However, the larger the number of drones, the greater the risk that flights in and out of the airport would have to be stopped. A retired British Airways pilot, Tim Pottage, gave evidence to similar effect.

8. There was a body of evidence as to what the appellants had said and published in the period leading up to their arrest on 12 September 2019. On 1 August 2019 Mr Hallam had met police officers in order to discuss the planned protests. Mr Hallam said that the plan was for the authorities to be notified one hour before drones were flown within the FRZ so that the necessary arrangements to close the airport to air traffic could be made. Also in August material was uploaded onto the Heathrow Pause website which included a statement "if the Pause action achieves its aim and Heathrow is closed, we will be in unchartered (sic) territory". During August and September 2019 there were many messages, press statements and public declarations issued by Heathrow Pause which indicated that the group anticipated that their actions would lead to suspension of flights into and out of Heathrow.

9. In his evidence Mr Hallam said that the public face of the Heathrow Pause campaign was to fly drones with the intention of closing the airport. In reality, there was no intention to close Heathrow. The flying of drones would be in breach of the 2016 Order or bye-laws. The media and public statements to the effect that they intended to close the airport was a political campaign. Mr Hallam said that he had no intention of actually causing the closure of the airport. Dr Maxey's evidence was to similar effect. The tactic of flying drones was to draw attention to the issue of Heathrow's proposed expansion. There was no intention to close the airport. It was all about getting publicity.

The legal framework

10. In September 2019 the crime of causing a public nuisance was a common law offence. In Rimmington [2006] 1 Cr App R 17 the House of Lords had to consider whether the offence still existed. Whilst it was found that the circumstances in which the offence properly should be charged would be relatively rare, it was said that the offence still existed. Lord Bingham at [10] adopted the definition of the offence as set out in the 2005 edition of Archbold (Criminal Pleading, Evidence and Practice):

> "A person is guilty of a public nuisance (also known as common nuisance), who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals, or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects."

In respect of the mental element Lord Bingham at [39] confirmed that the correct test was as stated in Shorrock (1994) 87 Cr App R 67 at 75:

> "…..what state of mind must be proved against a defendant to convict him of causing a public nuisance?.....the correct test was that laid down by the Court of Appeal in R v Shorrock [1994] QB 279, 289, that the defendant is responsible for a nuisance which he knew, or ought to have known (because the means of knowledge were available to him), would be the consequence of what he did or omitted to do."

Conspiracy is a statutory offence. The elements of the offence are in section 1 of the Criminal Law 1977:

> "(1)Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—
>
> (a)will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
>
> (b)would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,
>
> he is guilty of conspiracy to commit the offence or offences in question.
>
> (2)Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place."

11. By the time the jury came to consider their verdicts, it was not suggested that the commission of the offence was rendered impossible by the existence of some fact or facts. The issue was whether, assuming the course of conduct which was said to have been agreed were to be pursued, it would necessarily amount to or involve the commission of a public nuisance by one or more of the conspirators. That is the issue

which was the principal focus of the appellants' submissions. The consequence of section 1(2) of the 1977 Act in the context of a conspiracy to cause a public nuisance at common law is that the accused must intend that the effect of the agreed act(s) or omission(s) will be to endanger the public or to obstruct the public's exercise of common rights. The substantive offence may be committed when the accused ought to have known that the public would be endangered or obstructed in the manner identified in Shorrock. Self evidently it is not possible to conspire to have constructive knowledge. In this case, the case properly was left in unequivocal terms to the jury, namely that it had to be proved that the appellants intended to cause a public nuisance.

12. The common law offence of causing a public nuisance was abolished by the Police, Crime, Sentencing and Courts Act 2022. There is now a statutory offence of causing public nuisance in section 78 of the 2022 Act. Section 78(1) of the Act is as follows:

> "(1)A person commits an offence if— (a)the person —
>
> (i)does an act, or (ii)omits to do an act that they are required to do by any enactment or rule of law,
>
> (b)the person's act or omission—
>
> (i)creates a risk of, or causes, serious harm to the public or a section of the public, or (ii)obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
>
> (c)the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence."

13. The statutory offence applies to any act or omission after 28 June 2022. The offence is not in precisely the same terms as the common law offence. The mental element of the offence includes recklessness. Were there to be a charge of conspiracy to cause the statutory form of public nuisance, the prosecution would have to prove that the conspirators intended the consequence in paragraph (b) of section 78(1) of the 2022 Act.

The submissions before the judge

14. The particulars of the offence in the indictment before the jury were that the appellants conspired together and with Lynch-White and with others "to cause a nuisance to the public, namely the closure of Heathrow Airport to air traffic, necessitated by the unauthorised and unlawful flying by individuals with drones within the FRZ". On behalf of the defendant who in due course was acquitted, Mr Goold submitted at the close of the prosecution case that the intended course of conduct as set out in the indictment, namely the flying of drones, would not necessarily have led to the closure of Heathrow to air traffic. He relied on the evidence of Mr Farmer that, if the Safety Protocol were complied with, it would not be necessary to close the airport. The submission was rejected on alternative bases. First, the prosecution were not limited to alleging an agreement to close the airport purely by flying drones within the Safety Protocol. In the light of what the appellants (and the other defendant) had said and

published, the prosecution were entitled to say that they had agreed to cause the closure of the airport by flying drones in a way that would achieve that object. The prosecution did not need to show that any particular action by the appellants and other conspirators would have succeeded, only that it was possible. Second, the judge found that it would have been open to the jury to find that it was not possible that flying drones within the Safety Protocol could have led to closure of the airport. In those circumstances, the jury would be entitled to convict by reference to section 1(b) of the 1971 Act. The judge in his written ruling set out a draft route to verdict encompassing the alternative routes to conviction. One of the draft questions for the jury was:

> "…..are you sure that the agreement encompassed flying drones (themselves or by encouraging others to do so) sufficient to achieve the result of compelling the airport authorities to close the airport OR at least that they agreed to carry out specific drone flying in the belief that so doing would compel the authorities to close the airport even though, in fact, it would be impossible to achieve the closure of the airport by the specific method that they had agreed to adopt."

15. The case proceeded. Both of the appellants and defendant who was acquitted gave evidence. The judge then directed the jury on the law. He provided written directions. They included the question he had set out in his ruling on the submission of no case to answer. In the course of his address to the jury, Dr Maxey made forensic points in relation to the Safety Protocol and the prosecution approach to the document. Precisely what those points were is of no consequence in the appeal. As a result of what Dr Maxey had said, Mr Curtis on behalf of the prosecution disavowed any suggestion that the protocol was anything other than genuine. Of greater significance, he also rejected the proposition that the jury could convict the appellants on the basis that, although they believed to the contrary, it would be impossible to achieve the closure of the airport by the means they had agreed to adopt. We did not engage in an investigation as to how Mr Curtis reached that position given the terms of the judge's written ruling given 12 days earlier and the route to verdict which had been discussed with counsel. All that matters for our purposes is that the judge had to reconsider the ruling he had made at the close of the prosecution case. A revision of the route to verdict also was necessary.

16. The judge found that there was still a case to answer. He concluded that the word "necessarily" in section 1(1)(a) of the 1977 Act was to be construed by reference to the consequence of the closure of Heathrow as a public nuisance. It did not constitute a requirement on the prosecution to prove that a particular method of achieving a result necessarily would have succeeded. His revised route to verdict was as follows:

> "Are you sure that there was an agreement intending to cause the authorities to close Heathrow Airport to air traffic – at least temporarily?
>
> Are you sure that the defendant you are considering believed that flying drones in accordance with the safety protocol in the numbers that defendant contemplated was capable of compelling the closure of the airport?

> If so are you sure that defendant entered into an agreement intending to compel closure by the flying of drones in that way?
>
> Are you sure that it was a possibility that flying drones within the terms of the protocol could have achieved such an intention to compel the airport authorities to close the airport to air traffic?
>
> Are you sure that closing the airport, were it to be achieved, would necessarily cause a public nuisance?"

17. The jury were required to answer in the affirmative to all five questions before they could convict the defendant whose case they were considering.

18. The judge's first ruling in relation to the submission of no case was on 1 December 2023. The second ruling was delivered on 12 December 2023. On 13 December 2023 there was some consideration of whether the trial had been fatally compromised by the significant switch in focus which had occurred the day before. Both Mr Goold on behalf of the defendant who later was to be acquitted and Mr Hallam on his own account wished to proceed with the trial. Mr Goold had yet to address the jury. He was able to deal with the changed landscape of the case in his speech. Mr Hallam did not ask for an opportunity to address the jury any further. Dr Maxey reserved his position. After Mr Goold had addressed the jury, Dr Maxey asked for the opportunity to address the jury further on a single discrete issue. The judge did not give him that opportunity. The issue was one with which the judge felt able to deal so as to ensure that no prejudice resulted. Dr Maxey, in line with the other defendants in the trial, did not ask for the jury to be discharged. The judge provided a further short written ruling on 13 December 2023 explaining why the case in his judgment was able to continue. He asked himself whether the revised route to verdict did justice to all parties. He concluded that it did. He also determined that, although Mr Hallam and Dr Maxey in part addressed in their evidence and in their speeches to the jury issues which no longer were relevant, their fundamental case was unaffected by the shift in the way the case was to be left to the jury. They said that they did not intend by any agreement to cause the closure of Heathrow. They dealt with the evidence and the arguments supporting that proposition. They would not have taken any different approach had they known of the terms of the revised route to verdict.

The submissions on appeal

19. The appellants' principal argument is that the evidence did not establish an agreement to cause a public nuisance and that the judge misinterpreted section 1(1)(a) of the 1977 Act. They say that the judge conflated the conduct and mental elements of the offence. The conduct to be proved was an agreement to pursue a course of conduct which would necessarily involve the commission of the offence of causing a public nuisance. On the facts of this case that meant a course of conduct (flying drones) which would bring about the public nuisance, namely closure of the airport. The mental element was the intention that the course of conduct would bring about the public nuisance alleged. The appellants submit that the judge in his ruling on 12 December 2023 was wrong to find that the prosecution did not have to prove that the conduct alleged necessarily would lead to the closure of the airport. The effect of his ruling was that the appellants could be convicted simply on the basis of their intention irrespective of whether their conduct was capable of causing a public nuisance. The House of Lords in Nock (1978) 67 Cr

App R made clear that this was not the law. The essence of the submission was that, if flying drones would not necessarily have led to the intended consequence (the closure of the airport), the offence as indicted would not be made out.

20. The secondary submission in relation to the insufficiency of the evidence concerns the intervention of a third party. The appellants were never planning to close the airport by their direct actions. Rather, insofar as they intended to close Heathrow, it was to be by the actions of the relevant authorities as represented by Mr Farmer. The judge acknowledged that this was an unusual position. He found that the airport authorities were innocent agents. The appellants say that the doctrine of innocent agency only can apply where the innocent agent is an unwitting participant. An example of innocent agency is Stringer (1992) Cr App R 13 where the manager of a company induced an unwitting employee to sign a fraudulent invoice so as to lead to payment of funds to the manager. The manager was guilty of theft of the funds. The employee had not exercised any independent judgment. In this case, had the airport been closed because Mr Farmer or some other senior manager at Heathrow decided that safety required it, they would have been exercising independent judgment. The exercise of such judgment broke the chain of causation.

21. Separate to the arguments relating to the sufficiency of the evidence, the appellants submit that the change in the way in which the case was put against them after they had addressed the jury led to demonstrable unfairness. The original route to verdict catered for the prospect that it was impossible that the agreed course of conduct could have caused the airport to be closed. The appellants addressed the jury on the basis that the closure of the airport was possible albeit that this was not their intention. Had the appellants known that the route to verdict would be changed to remove the prospect of impossibility, they would not have addressed the jury in those terms. Where the basis of the prosecution case alters significantly after closing submissions by unrepresented defendants, it will be an exceptional case where that does not cause substantial unfairness. This was not an exceptional case. The confusion and incoherence created by the change of tack by the prosecution meant that the appellants did not receive a fair trial.

Discussion

22. The essence of the offence of conspiracy is the agreement. As soon as the agreement is reached, the offence is complete. In many cases, part of the proof of the agreement will be evidence of overt acts which represent the agreement being put into effect. Often establishing the existence of a criminal agreement will be a matter of inference. If a group of people commit a substantive offence in circumstances which show that the offence was planned by them, the group can be said to have conspired to commit the offence. But proof of the agreement being put into effect is not required in order to prove the offence.

23. The appellants' principal argument depends on the proposition that the words "necessarily will amount to or involve the commission of any offence" in the factual context of this case mean that the prosecution had to prove that the course of conduct agreed by them necessarily or inevitably would result in the closure of the airport. Were that to be a correct interpretation of section 1(1) of the 1977 Act, the evidence of Mr Farmer would mean that the prosecution could not succeed. It is said that the judge in

his rulings in relation to the sufficiency of the prosecution case conflated conduct and intention.

24. In our view it is the appellants' argument which conflates different elements of the offence. The words "necessarily will amount to or involve the commission of any offence" relate to the legal quality of the intended outcome rather than the inevitability of the outcome resulting. The words in section 1(1) "if the agreement is carried out in accordance with their intentions" require a jury to consider the consequences of the course of conduct if carried out in accordance with the intention of the accused as alleged by the prosecution. Once the jury are sure that the intention was as alleged by the prosecution, the issue is whether the intended consequences "will necessarily amount to or involve the commission of any offence". The fifth question of the revised route to verdict reflected this. On the facts of the case, the prosecution alleged as follows:

    i) The appellants and others agreed to carry out a course of conduct.

    ii) They intended by the course of conduct to cause Heathrow Airport to be closed.

    iii) If the agreement were carried out in accordance with their intentions, it would involve the offence of causing a public nuisance.

    That was a case which the judge properly left to the jury. If established on the facts, the appellants were guilty. That was the conclusion the jury reached. On the evidence, they were entitled to do so. The flying of many drones carried with it the possibility of a closure of the airport. The appellants had stated their intentions in clear terms prior to 13 September 2019. In contrast, the appellants' case was that they did not intend to cause the airport to be closed. If the jury had found that this was or may have been the case, the appellants would have been acquitted. The first and third questions of the revised route to verdict required the jury to be sure that the appellants intended to cause the closure of the airport. The verdicts in relation to the appellants shows that the jury were so sure.

25. In the course of submissions it was said that this was a complicated and unusual case. With due respect to all concerned, we do not agree. The first, third and fifth questions of the revised route to verdict were straightforward. They encompassed the elements of the conspiracy alleged. The complications were introduced by the approach taken at the different stages of the case by one or more of the parties. Once the issues had been properly defined (as they were in the judge's ruling of 12 December 2023) those complications were resolved.

26. The supposedly unusual aspect of the case was that the alleged agreement was to take actions which would compel a third party to do something which caused a public nuisance. In the context of protests in relation to climate change, it is not unusual that the acts of the conspirators do not directly lead to public nuisance. The appellants in this case were prosecuted by reference to the common law offence. The substantive offence required the effect of the conduct to be interference with the rights of the public. Where conduct creates a risk to public safety, it is entirely foreseeable that the authorities will take reasonable steps to prevent that risk. Thus, the effect of the conduct is to cause a public nuisance. Although the definition of the statutory offence is different, the position vis-à-vis the actions of protestors remains the same. The conduct

in the statutory offence is to obstruct the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large. Acting in a way that may lead the authorities to take reasonable steps to preserve public safety, those steps also obstructing the exercise of public rights, will be conduct caught by the offence in the 2022 Act. That is demonstrated by two of the cases considered by this court in Hallam and others [2025] EWCA Crim 199. They concerned conspiracies where the conduct was to climb onto a gantry or gantries over the M25 motorway. The fact that people were on a motorway gantry of itself was not significant. The public nuisance resulted from the police stopping traffic. Although this court was concerned with the sentences imposed, it is clear that there was no issue of any break in the causal chain. The public nuisance was caused by the conduct of the protestors.

27. The judge considered that the concept of innocent agency was the means by which to fix someone in the position of the appellants with criminal liability for the public nuisance. For the reasons we have given, we do not consider that resort to this concept was necessary. Climate change protestors understand how the authorities will react to particular forms of protest in order to preserve public safety. In protesting in that way, the protestors cause the authorities to take those steps. Thereby they cause the public nuisance.

28. Insofar as innocent agency had any part to play, we do not accept the proposition that it cannot arise where the agent has exercised independent judgment. In Stringer the court expressly approved the definition of innocent agency taken from Glanville Williams' Textbook of Criminal Law (4th ed., 1978):

> "A person acts through an innocent agent when he intentionally causes the external elements of the offence to be committed by (or partly by) a person who is himself innocent of the offence charged by reason of lack of a required fault element, or lack of capacity."

The airport authorities in this instance, had they decided to close Heathrow to air traffic, would not have any fault element. To be more precise, they would have had a defence to any charge of causing a public nuisance. The fact that they would have been exercising independent judgment would be of no consequence.

29. For all of those reasons the judge was entirely correct to rule at the close of the prosecution case that the appellants had a case to answer and thereafter to permit the jury to consider the case against the appellants on the revised route to verdict.

30. We turn to the submission that the change in tack on 12 December 2023 created irredeemable unfairness for the appellants. In his ruling of 13 December 2023 the judge acknowledged that there was a problem. He described the situation which had arisen as "immensely disappointing". We sympathise with that view. Through no fault of the judge, one way in which the case had been summed up to the jury – that the purpose of the conspiracy would have been impossible to achieve – had to be abandoned. This would have been difficult enough had all parties been represented. The situation was exacerbated by the fact that the non-lawyer appellants were representing themselves. In terms of the revision of the route to verdict and the presentation of the revised route to the jury, we consider that the judge dealt with the position in an exemplary manner. He provided the jury with a fresh document and told them to dispose of the original

document. He explained concisely and accurately why the directions had had to be changed. He went through the revised route to verdict.

31. At no point was the judge asked to discharge the jury. Mr Blaxland argued that, since the appellants were unrepresented, this point ought to be of little consequence in our consideration of the issue. It is said that the question for us is whether the judge ought to have concluded that the turn of events had rendered continuing the trial unfair.

32. We accept that an unrepresented defendant will not be able fully to assess the effect of a late change in the nature of the case and/or the advisability of continuing with a trial. There may be cases where a trial judge considers that the late change is so significant that the unrepresented defendant should be alerted to the possibility of the jury being discharged. The judge is not required to engage in a debate on the issue whether with the defendant and/or with the prosecution in every case. What will be needed is a clear exposition by the judge (whether orally or in writing) of their appreciation of the potential problems and of the reasons for continuing with the trial. That is precisely what happened in this case.

33. The judge first asked whether the jury would be able to cope with the change in the way the case was being put them in the route to verdict. He concluded that they would. This conclusion is not the subject of any criticism. Second, he asked whether the change had so wrong footed the appellants that fairness required the jury to be discharged. His judgment was that the essence of their case, namely that they did not intend the airport to be closed to air traffic, was not affected by the change of tack. We consider that this is not open to proper criticism. In argument before us, it was said that prejudice flowed from the appellants having conceded in their evidence and in their submissions to the jury that closure of the airport was a possibility. It is said that, had they known that the question of impossibility of outcome was not to be left to the jury, these concessions would not have been made. We do not consider that this is a tenable argument. On the evidence called by the prosecution, the possibility of closure was clearly established. In making the concessions they did, the appellants were not depriving themselves of a defence or even of a good forensic point. Their case throughout was that they did not intend to cause a public nuisance. The issue of impossibility was never a live one so far as they were concerned. The removal of that issue from the jury's consideration did not affect their approach to the case. It is not a question of seeing whether there is exceptionality which might justify continuing with the trial. Rather, the issue is whether on the particular facts of the case any injustice occurred. In this instance, none did.

Conclusion

34. For the reasons we have set out none of the grounds of appeal provides any basis for overturning the convictions. The jury were left with the correct questions to answer in order to reach proper verdicts. Those verdicts cannot be impugned.