

Trial of the Colston Four

The recent case of the Colston Four has attracted a large amount of political and media attention.

In this article, PNLD Legal Adviser, Amy Robinson, aims to provide a summary of the case and an insight into the legal provisions concerned.

The Case

In early January 2022, the trial of the Colston Four concluded at Bristol Crown Court. The case centred around the actions of four individuals during a Black Lives Matter protest that took place on 7th June 2020 in Bristol. On that day, a protest was conducted through the city centre. A group of people, including the four defendants, Rhian Graham, Milo Ponsford, Jake Skuse and Sage Willoughby, pulled down the statue of Edward Colston from its memorial stand. The statue was graffitied on, rolled to the harbour area and thrown into the water. There was damage to the statue, the paving slabs and the railings at the harbour. Edward Colston was a Bristol-born shipping merchant who was heavily involved in the slave trade in the late 1600's with the Royal African Company. At the time, Colston was an influential figure in Bristol. In more recent times, the statue of him was the subject of a long campaign by the citizens of Bristol to remove the celebratory references to Colston that were still in existence throughout the city.

The four were charged with criminal damage and it was the prosecution case that Graham, Ponsford and Willoughby toppled the statue with Skuse rolling it into the harbour. The estimated cost of damage to the statue was £3,750, £2,400 damage to the pavement and £350 damage to railings.

The four were acquitted of criminal damage by a jury on a majority verdict.

The Law

[Section 1](#) of the Criminal Damage Act 1971 creates the offence of criminal damage:

1(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.

1(2) A person who without lawful excuse, destroys or damages any property, whether belonging to himself or another -

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;

shall be guilty of an offence.

Section 1(2) provides the defence of 'lawful excuse'. This means that if a person can prove they had a lawful excuse for taking the specific action they did, then they have a defence for the crime of criminal damage.

[Section 5](#) of the Criminal Damage Act 1971 defines 'lawful excuse' for the purposes of the Act.

Section 5(a) and (b) state that a person is deemed to have 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; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 3, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed -

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

The important thing is to prove, or disprove, the state of mind of the person doing the damage. If a person states that they honestly and genuinely held a belief that they had a lawful excuse and the jury believe them, then they will be acquitted. It does not matter if the lawful excuse is justified, as long as the belief is honestly held (Section 5(3)).

The Legal Positions

The prosecution case sought to prove, simply, that criminal damage on the statue had been committed by the four. The prosecution presented their case with witness evidence of the damage caused and evidence to demonstrate that the four had themselves committed the damage, including CCTV of the statue being toppled and phone evidence showing some of the defendants later discussing that they had pulled the statue down. The evidence demonstrated the role that each of the defendants had played in the statue being grounded and rolled into the water in the harbour. The prosecution case was that the significance of the statue, the history of Colston and the general social feeling around the statue and Colston was irrelevant to the facts before the jury.

Ponsford argued that his involvement was only in providing the ropes that were placed around the statue's neck by others and assisting with pulling it down. Willoughby argued that his involvement was placing the ropes around the neck of the statue but denied pulling on the ropes. Graham argued that her involvement was supplying ropes that were used to pull the statue down and also assisting with pulling the ropes. Skuse accepted he had rolled the statue to the water after it had been toppled. The defendants did not dispute the facts of the prosecution case, but argued that they had a 'lawful excuse'.

The prosecution had to disprove that the defendants had a lawful excuse for damaging the property.

The defendants argued the following lawful excuses;

- reasonable force used in the prevention of crime; and
- belief in the owner's consent

They also argued that a conviction would be a disproportionate interference with the defendants' rights.

Prevention of crime

The defendants argued that they had used reasonable force to prevent crime, as permitted under [section 3](#) of the Criminal Law Act 1967. The crimes were:

- public display of indecent matter; and
- display of a visible representation which is abusive and within the sight of a person likely to be caused distress by it.

The Jury had to be sure that the defendants had carried out the acts with a genuine and honest belief (even if that was a mistaken belief) that they were preventing a crime. The jury also had to be sure that the force used was 'reasonable' in the circumstances as the defendants believed them to be.

In essence, the defendants had to have used reasonable force in the actions that they conducted, whilst holding a genuine and honest belief that they were preventing a crime (or crimes) from being committed.

The prosecution argued that the statue was neither abusive nor indecent and no crime was committed by Bristol City Council in continuing to display it. They argued that the defendants did not believe they were preventing a crime, rather that they were forcing their own agenda as they were frustrated by the lack of progress in the debate about the statue.

The prosecution said that even if the jury believed that the display of the statue did amount to a crime and that the defendants honestly believed they took the action to prevent the crimes, then the force could not be found to be reasonable as there was a process in place through which concerns about the statue could have been dealt.

Belief in owner's consent

The defendants Graham and Skuse additionally argued that they had a lawful excuse, as they believed they had the owner's consent to carry out the damage on the statue. They both said that at the time, they believed the statue was owned by the people of Bristol city and held an honest belief that the people of Bristol, knowledgeable about the circumstances, would have consented to the damage.

The prosecution argued that as the defendants had taken no steps to find out if the people of Bristol would consent to the damage, there was no way they could have honestly held this belief.

Disproportionate interference with defendant's rights

This defence focused on two fundamental rights:

- the right to freedom of thought and conscience and to manifest one's beliefs; and
- the right to freedom of expression, including to hold opinions and impart ideas.

The defendants argued that a conviction for criminal damage in these circumstances would be a disproportionate interference with their above human rights.

The Judge directed the jury that even if they were sure that the elements of criminal damage were made out, and they rejected the other lawful excuses put forward by the defence, they must then consider whether a prosecution would be necessary in a democratic society, in the interests of public safety or for the protection of rights of others.

In weighing up the proportionality of an interference with rights, the jury were asked to consider the following non-exhaustive list:

- The extent of the interference with the rights of others, notably the rights of Bristol City Council and of other Bristolians, on whose behalf they held the statue in trust.
- Whether the defendants believed in the views which motivated their actions.
- Whether those views relate to very important issues.
- The importance to the defendants of the method of protest adopted.
- Whether the actions of the defendants were directly aimed at the matter of which they disapproved.
- Whether the defendants' actions presented a danger to public safety.

All four defendants were acquitted of all charges by the Jury on a majority verdict.

Final Note

The decision to acquit the defendants sparked a public reaction from some high-level Government ministers and politicians who have communicated their fear that this decision sets a precedent on criminal acts committed during lawful protests. There has been open commentary from some politicians on how to potentially further legislate, to protect historical landmarks and buildings, within the [Police, Crime, Sentencing and Courts Bill](#). One measure in this Bill clarifies that damage to memorials could lead to up to 10 years' imprisonment. The Bill has recently been considered and partly rejected by the House of Lords.

At the time of writing, the Attorney General, Suella Braverman, has told the media that she is 'carefully considering' whether to refer the case to the Court of Appeal. Section 36 of the Criminal Justice Act 1972 allows the Attorney General, following a submission from the Crown Prosecution Service, to ask a higher court to clarify a point of law. However, the acquittal cannot be over-turned by a higher court and the defendants cannot be retried, without fresh evidence. A referral to the Court of Appeal could only seek to clarify a point of law for future cases. It is not clear at this time what point of law would be requested to be clarified.

The statue of Edward Colston has been displayed with placards and pictures from the Black Lives Matter Protest in June 2020 in the [M Shed Museum in Bristol](#). A survey has also been conducted to assess what the public think should happen to the statue next. The results are due to be published by the 'We Are Bristol History Commission' in early 2022.