IN THE NOTTINGHAM MAGISTRATES' COURT

Before District Judge (Magistrates' Court) M. Cooper

Regina v. Garry GLASS
Regina v. Ian PARKER
Regina v. Emma ROBINSON
Regina v. Andrew COOK
Regina v. Andrew WOODCOCK
Regina v. Samantha BROWN
Regina v. Timothy ALLMAN
Regina v. Eleanor FAIRBROTHER
Regina v. Peter NELSON
Regina v. Timothy GALLAGHER

JUDGMENT

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1. The ten defendants in this case are all charged with the same offence of aggravated trespass, namely on 10th April 2007 at Ratcliffe on Soar in the County of Nottingham trespassing on land and entering into buildings with the intention of obstructing or disrupting persons engaged in a lawful activity, contrary to section 68(1)(b) of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). All entered pleas of not guilty earlier in the proceedings. The trial commenced on 14th January 2008 and continued on 15th and 16th January. After defence speeches, I reserved judgment in respect of the ten defendants listed above. An eleventh defendant, Stuart BARNES, had been tried along with these defendants, but I dismissed the charge relating to that defendant, due to inadequate evidence of participation by him in the alleged joint enterprise.

2. The defendants GLASS, PARKER, ROBINSON and COOK are all represented by Mr. Tomlinson, of Messrs. Kieran Clarke, Solicitors. The

other defendants are unrepresented. Mr. Cunningham appears for the Crown.

3. At a previous case management hearing each defendant made it clear that he or she would rely on a defence of necessity, or duress of circumstances. It was decided that, consistent with the efficient management of the case, it would be appropriate to list the case for argument with a view to a pre-trial binding ruling on the question of whether, on the facts asserted by the defendants, such a defence is available to them. Directions were given for the service of skeleton arguments and legal authorities and the case was listed on 13th November 2007 for argument on the point.

4. Prior to the hearing on 13th November 2007, skeleton arguments were submitted on behalf of the Crown and by Kieran Clarke Solicitors on behalf of their clients. The defendants WOODCOCK, BROWN, ALLMAN and FAIRBROTHER also submitted skeleton arguments that are very similar to each other in their terms. No skeleton arguments were submitted by the defendants BARNES, NELSON and GALLAGHER, but they made it clear at the hearing on 13th November 2007, that they seek to rely on and associate themselves with submissions made in writing by other defendants.

5. The case came before me on 13th November 2007 and, although there was some argument upon the point, Mr. Cunningham, on behalf of the Crown conceded that there was an evidential basis for the issue of duress of circumstances or necessity to be considered at the trial. In the light of that, I left the issue open for consideration at trial.

6. The trial has been conducted by all parties in a very orderly fashion.

7. Three witnesses gave live evidence on behalf of the Crown as to the events at Ratcliffe on Soar Power Station on 10th April 2007, namely Raymond SMITH (Plant Manager at the power station), Christopher MARSH (Assistant Shift Team Leader) and Nicholas HOLLICK (Services Engineer and Head of Security), all of them employees of e-on, the company operating the power station. In addition, written statements of the following police officers were agreed: P.C. Brendan GAYNOR, PC Philip ENGLAND, P.C. Jon RAYNOR, p.c. James DICKINSON, P.S. Glenn CHAMBERS, P.C. Scott SAXTON, D.C. Darran OWEN and D.S. Peter SHAW. That agreed evidence related to the arrest, detention and charging of the defendants. Records of tape-recorded interviews with the defendants were also agreed.

8. All ten defendants gave evidence. All admitted entering land at Ratcliffe on Soar Power Station as trespassers and then entering buildings with the intention of interrupting the supply of coal to the boilers and thereby reducing the amount of carbon dioxide emitted. They all admitted the elements of the offence charged, but asserted that their actions were legally justified in order to prevent death and serious injury caused by global warming. With the agreement of the Crown, the defendants produced a

considerable amount of published, written material on the subject of global warming, containing some alarming information.

9. An expert witness was called to give evidence on behalf of the defendants. He was Dr. Simon LEWIS, a scientific researcher employed by the Royal Society, based at the Earth & Biosphere Institute at the University of Leeds. He is an expert on the interactions of climate change and ecosystems. He is the author of many peer-reviewed technical papers in the world's leading journals, several of which are cited by the United Nation's Intergovernmental Panel on Climate Change. He is a member of the Royal Society's Climate Change Advisory Network and the United Nations ad hoc Expert Working Group on Biodiversity and Climate Change. He advised the Government of the United Kingdom during preparations for the G8 and UN meetings discussing climate change. Dr. LEWIS's evidence about the effect of human activity on global warming was not challenged by the Crown.

FACTS

10. I found the following facts in respect of the events of 10th April 2007 at Ratcliffe on Soar Power Station:

(i) Ratcliffe on Soar Power Station is operated by e-on and is a large, coal-fired power station providing electrical power to the National Grid.

(ii) Over the Bank Holiday weekend prior to Tuesday 10th April, 2007, Ratcliffe on Soar Power Station had been shut down, as there was no call for it to generate power at that time.

(iii) By the time the defendants entered the premises on 10th April, 2007, three out of the four generators at the power station were back on line, generating electricity; the remaining generator being out of action for maintenance and overhaul. The three generators that were operating were producing their maximum output of electricity, being a total of 1,500 megawatts (500 per unit).

(iv) As a consequence of generating the electricity referred to, above, the boilers at the power station were emitting considerable quantities of carbon dioxide gas (CO_2) in the exhaust gases.

(v) At the time that the defendants entered the premises, the coal bunkers, supplying the boilers at the power station, were full and were capable of continuing to supply the boilers for seven to eight hours without replenishment.

(vi) At approximately 9 am on Tuesday 10th April, 2007, the ten defendants, acting in concert, entered as trespassers the land upon which Ratcliffe on Soar Power Station is situated. Having done so, all ten defendants then entered buildings on that land, namely the Coal Plant and the Coal Plant Junction Tower, where some defendants attached themselves, by chain or other form of locking device, to items of machinery, whilst others positioned themselves in places calculated to interfere with the working of the Coal Plant or to assist their associates. Some defendants had put themselves in danger by the position in which they had chosen to attach themselves and were permitted by power station staff to move to a different location

(vii) All ten defendants intended, by their actions, to reduce or prevent the emission of CO_2 by the boilers at the power station, by obstructing the delivery of coal. The processes which the defendants intended to obstruct or disrupt amounted to a lawful activity by employees of the power station. They had no permission or lawful authority to take this action.

(viii) Another group of people had, at the same time, mounted a demonstration at the entrance to the power station.

(ix) The function of the Coal Plant and Coal Plant Junction Tower relates to the movement of coal, delivered by road, rail or from stock, to the bunkers supplying the boilers, by conveyer belt systems.

(x) At the time that the defendants took these actions, the coal bunkers were full, following the weekend when the power station was not generating, and the conveyer systems were not operating. However, it would have been necessary to operate these systems later in the day, in order to maintain generation of electricity, failing which it would have been necessary to shut the power station down.

(xi) As a result of the actions of the defendants, generation of electricity at Ratcliffe was reduced by approximately 100 megawatts only and in order to provide for the possible need to close down generation at Ratcliffe, steps were taken by e-on to fire up another coal fired power station at Ironbridge. It was not clear what stage had been reached in preparing Ironbridge by the time the defendants had been removed, nor was I able to form any conclusion about what effect the defendants actions would have had on overall production of CO_2 by e-on.

(xii) In order to ensure the safety of the defendants and staff at the power station, steps were taken to ensure that the machinery in

the Coal Plant and the Coal Plant Junction Tower would not operate until after the defendants had been removed.

(xiii) Police officers attended the incident and the defendants were removed with the assistance of power station employees and were arrested. Although the defendants refused to leave voluntarily, and those attached to machinery had to be released by cutting or dismantling items to which they had attached themselves, the defendants were otherwise acting in an entirely peaceful and non-violent way.

(xiv) The period of time over which the defendants were on the power station premises was between four and five hours.

(xv) During the week preceding the date of the alleged offence, the defendants had attended a series of educational workshops entitled "Spring into Action", where they had received the latest information about the impact of human activity on climate change, the number of deaths and other adverse consequences already occurring as a result of extreme weather events linked to climate change, together with scientific predictions for the future. They all formed the belief that climate change, brought about by human activity resulting in the emission of greenhouse gasses, is already causing such extreme weather events and that they had a responsibility to take action. They believed, most probably correctly, that Ratcliffe on Soar Power Station was the largest emitter of CO_2 in the East Midlands and that preventing such emissions for a period of time would make a contribution to reducing the impact of greenhouse gas emissions on climate change and thus, they hoped, save lives. I am satisfied, having heard each defendant give evidence, that each felt, and continues to feel, genuine fear as to the effects of climate change and that their beliefs were genuine.

11. From the evidence of Dr. LEWIS, I found the following facts with regard to climate change:

(i) Carbon dioxide (CO_2) is the dominant one of a number of 'greenhouse gases', so called because they allow the Sun's rays to reach the Earth's surface but then prevent some of that heat escaping back to space.

(ii) By burning fossil fuels, including coal, and cutting down forests, human activity has increased the amount of CO_2 in the atmosphere from about 280 parts per million before the Industrial Revolution to about 380 parts per million today,

higher than it has been for at least 650,000 years. This increase is enhancing the greenhouse effect, heating up the Earth.

(iii) Small amounts of CO_2 have large effects and, because the Earth is an inter-connected and inter-dependent system, the increase in temperature is affecting many other processes from rainfall to which plants are able to grow where.

(iv) The effect of adding CO_2 to the atmosphere is cumulative, as the molecules of the gas will, on average, reside in the atmosphere for decades and some for centuries. While ever the gas is present, it has an effect on increasing temperature.

(v) Predicting the future impacts of CO_2 emissions and resulting climate change and attributing specific changes that have already occurred is fraught with difficulties. Attribution is based on the change in the probability of an event occurring (eg an extreme weather event). Objective probabilities cannot be given, only subjective probabilities based on clearly stated assumptions. Scientists refer to statistical probabilities.

(vi) Any addition of CO_2 to the atmosphere contributes to an increase in the probability of extreme weather events. Any reduction in such emissions has the opposite effect.

(vii) The consensus scientific view is that rapid climate change is having substantial effects on many processes now. The World Health Organisation estimates that, globally, 150,000 people die every year as a result of climate change, eg. due to extreme weather events such as heat-waves, floods and draughts.

(viii) The impact of CO_2 emissions from human activity has doubled the probability of an extreme weather event. However, it is not possible to attribute any particular extreme weather event to the increase in global warming brought about by human activity, because some extreme weather events would occur in any event.

(ix) Consistent with climate change predictions was the heat-wave in Europe in 2003, which was calculated to have killed 35,000 (mostly old) people from nine countries, including the UK, in excess of the number expected to die at that time of year. It is reasonable to assume that the impacts of climate change will affect people in the UK in the near future.

(x) The rapid rise in greenhouse gases in the atmosphere could set in motion large-scale and potentially abrupt changes in the Earth's natural systems that may be irreversible, including "surprises". Studies suggest that the Amazon rainforest could be replaced by savannah and that the entire West Antarctic Ice

Sheet could melt, triggering massive sea-level rises. Breaching one such threshold may increase the probability of then crossing another.

(xi) The majority of scientists agree that it is necessary to limit temperature increases to a maximum of 2 degrees centigrade above pre-industrial levels to avoid "dangerous interference with the climate system", which is the target for the European Union and the British Government. There has already been an increase of 0.6 degrees, which is continuing at a rate of 0.2 degrees per decade. The timescale for achieving the 2 degree target is concerned with probabilities. To give a reasonable chance of achieving it, CO_2 in the atmosphere would have to be stabilised at 400 parts per million (the current concentration of 380 ppm is rising by 1.9 ppm per year). This would require that global emissions peak within the next seven years, and globally to decline by between 50% and 85% by 2050, which represents a reduction in developed countries of about 90% by 2050 or sooner (or at least 5% every year).

(xii) As to the contribution to global CO_2 emissions made by Ratcliffe on Soar Power Station, Dr. LEWIS stated that total global emissions were in the region of 28 billion tonnes per year, roughly 9 million tonnes of which was believed to be emitted at Ratcliffe.

DURESS OF CIRCUMSTANCES / NECESSITY

12. All of the defendants have asserted that their actions were justified under the law relating to so called "duress of circumstances" or necessity. For present purposes it seems to me that the former may be regarded as a form of the latter. The law relating to this subject is far from clear as to the scope of such a defence. I am not aware of any legal authority that addresses the question of whether a global threat brought about or contributed to by global human activity is within the scope of such a defence. This case, therefore, goes into uncharted legal territory.

13. The Crown conceded that there is an evidential basis for the defence in this case and is, therefore, required to prove to the criminal standard of proof that the defence is not made out.

14. The defendants have aligned themselves firmly together in relation to both facts and law. They have presented their arguments cogently and effectively.

15. I have been referred by the parties to **Archbold 2007, Chapter 17, paragraphs 124 to 132** inclusive (reproduced at the same place in the

2008 edition). The following cases have also been cited by one side or another:

R v Jones and others [2004] EWCA Crim 1981
R v Jones and others – Judgment of Grigson J at Bristol Crown Court on 12th May 2007 (transcript provided)
Lord Advocate's Reference No. 1 of 2000, Appeal Court, High Court of Justiciary (transcript provided)
R v Martin 88 Cr App R 343, CA
R v Abdul Hussain [1999] Crim L R 570
R. v. Shayler [2001] 1 WLR 2206
R v Hudson and Taylor [1971] 2 QB 202
R v Hutchinson Court of Appeal of New Zealand, 7th July 2003 (transcript provided)

16. I have been invited on behalf of the Crown and the defendants to adopt the statement of the law relating to necessity, as distilled from the decided cases, set out at **paragraph 17-132 of Archbold**, where it is stated,

"**A person will have a defence to a charge of crime if (a) the commission of the crime was necessary, or reasonably believed to have been necessary……, for the purpose of avoiding or preventing death or serious injury to himself or another; (b) that necessity was the *sine qua non* of the commission of the crime; and (c) the commission of the crime, viewed objectively, was reasonable and proportionate having regard to the evil to be avoided or prevented. It will not avail the defendant that he believed what he did to have been necessary to avoid the evil if, viewed objectively, it was unnecessary, or, though necessary, was disproportionate**"

17. The defendants rely upon the decision of the Court of Appeal (Criminal Division) in **R v Abdul Hussain [1999] Crim L R 570**. The appellants in that case had been convicted of hijacking an aeroplane. They had admitted what they had done at their trial, but contended that they had done so as a last resort to escape death, either of themselves or of their families, at the hands of Iraqi authorities. The trial judge had refused to allow the defence of necessity or duress of circumstances to go to the jury, ruling that the threat was insufficiently close and immediate to give rise to a virtually spontaneous reaction to the physical risk arising. The Court of Appeal decided that the defence was available in the circumstances of this case. Rose LJ, Vice President, stated as follows:

> "*In our judgment, although the judge was right to look for a close nexus between the threat and the criminal act, he interpreted the law too strictly in seeking a virtually spontaneous reaction. He should have asked himself, in accordance with Martin, whether there was evidence of such fear operating on the minds of the defendants at the time of the hijacking as to impel them to act as they did and whether, if*

so, there was evidence that the danger they feared objectively existed and that hijacking was a reasonable and proportionate response to it. Had he done so, it seems to us it that he must have concluded that there was evidence for the jury to consider."

18. Earlier in his judgment in that case, Rose LJ summarised the law on the subject in question as follows:

" In the light of the submissions made to us, we derive the following propositions from the relevant authorities:

1. Unless and until Parliament provides otherwise, the defence of duress, whether by threats or from circumstances, is generally available in relation to all substantive crimes, except murder, attempted murder and some forms of treason (R v Pommell [1995] 2 Cr App R 607 at 615C). Accordingly, if raised by appropriate evidence, it is available in relation to hijacking aircraft; although, in such cases, the terror induced in innocent passengers will generally raise issues of proportionality for determination, initially as a matter of law by the judge and, in appropriate cases, by the jury.

2. The courts have developed the defence on a case-by-case basis, notably during the last 30 years. Its scope remains imprecise (Howe, 453G-454C; Hurst [1995] 1 Cr App R 82 at 93D.

3. Imminent peril of death or serious injury to the defendant, or those to whom he has responsibility, is an essential element of both types of duress (see Southwark LBC v Williams (1971) 1 Ch 734, per Lord Justice Edmund-Davies at 746A; Loughnan, by the majority at 448 and the dissentient at 460; and Cole at page 10).

4. The peril must operate on the mind of the defendant at the time when he commits the otherwise criminal act, so as to overbear his will, and this is essentially a question for the jury (Hudson and Taylor at 4; and Lynch at 675F. It is to be noted that in Hudson and Taylor Lord Parker CJ presided over the Court, whose reserved judgment was given by Widgery LJ (as he then was).)

5. But the execution of the threat need not be immediately in prospect (Hudson and Taylor at 425). If in Cole the Court had had the advantage of argument, as to the distinction between imminence, immediacy and spontaneity which has been addressed to us, it seems unlikely that the second half of the paragraph at page 10 of the judgment which we have cited would have been so expressed. If, and in so far as anything said in Cole is inconsistent with Hudson and Taylor, we prefer and are, in any event, bound by Hudson an Taylor, as, indeed, was the Court in Cole.

6. The period of time which elapses between the inception of the peril and the defendant's act, and between that act and execution of the threat, are relevant but not determinative factors for a judge and jury in deciding whether duress operates (Hudson and Taylor; Pommell at 616A).

7. All the circumstances of the peril, including the number, identity and status of those creating it, and the opportunities (if any) which exist to avoid it are relevant, initially for the judge, and, in appropriate cases, for the jury, when assessing whether the defendant's mind was affected as in 4 above. As Lord Morris of Borth-y-Gest said in Lynch at 675F in the passage previously cited, the issue in Hudson and Taylor was "whether the threats were so real and were at the relevant time so operative and their effect so incapable of avoidance that, having regard to all the circumstances, the conduct of the girls could be excused."

8. As to 6 and 7, if Anne Frank had stolen a car to escape from Amsterdam and been charged with theft, the tenets of English law would not, in our judgment, have denied her a defence of duress of circumstances, on the ground that she should have waited for the Gestapo's knock on the door.

9. We see no reason of principle or authority for distinguishing the two forms of duress in relation to the elements of the defence which we have identified. In particular, we do not read the Court's judgment in Cole as seeking to draw any such distinction.

10. The judgment of the Court, presided over by Lord Lane CJ and delivered by Simon Brown LJ, in Martin, at 345 to 346 (already cited) affords, as it seems to us, the clearest and most authoritative guide to the relevant principles and appropriate direction in relation to both forms of duress. Subject to questions of continuance (which did not arise and as to which, see Pommell at 615D), it clearly reflects Lord Lane's judgment in R v Graham (1981) 74 Cr App R 235 at 241, which was approved by the House of Lords in Howe in 458G. It applies a predominantly, but not entirely, objective test, and this Court has recently rejected an attempt to introduce a purely subjective element divorced from extraneous influence (see Roger and Rose, 9th July 1997).

11. Clauses 25 and 26 of the Law Commission's draft Criminal Law Bill do not represent the present law. Accordingly, reference to those provisions is potentially misleading (see the forceful note by Professor Sir John Smith QC [1998] Crim LR 204, with which we agree).”

19. The passage in **R v Martin (1989) 88 Cr App R 343** at 345 referred to in paragraph 10 of the above passage, is as follows:

"*The principles may be summarised thus. First, English law does, in extreme circumstances, recognise a defence of necessity. Most commonly this defence arises as duress, that is pressure upon the accused's will from the wrongful threats or violence of another. Equally, however, it can arise from other objective dangers threatening the accused or others. Arising thus it is conveniently called 'duress of circumstances.'*

Secondly, the defence is available only if, from an objective standpoint, the accused can be said to be acting reasonably and proportionately in order to avoid a threat of death or serious injury.

Thirdly, assuming the defence to be open to the accused on his account of the facts, the issue should be left to the jury, who should be directed to determine these two questions: first, was the accused or may he have been, impelled to act as he did because as a result of what he reasonably believed to be the situation he had good cause to fear that otherwise death or serious physical injury would result? Secondly, if so, may a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted? If the answer to both those questions was yes, then the jury acquit: the defence of necessity would have been established."

20. In **R. v. Shayler [2001] 1 WLR 2206**, Lord Woolf CJ, giving the judgment of the court provided some assistance as to whom a defendant can claim to have responsibility for in relying on a defence of necessity. He stated at paragraph 49 of his judgment,

"we extract the following ingredients as being required if the defence of necessity is to be relied on: (i) the act must be done only to prevent an act of greater evil; (ii) the evil must be directed towards the defendant or a person or persons for whom he has responsibility or, we would add, persons for whom the situation makes him responsible; (iii) the act must be reasonable and proportionate to the evil avoided. We make the addition to (ii) to cover, by way of example, the situation where the threat is made to set off a bomb unless the defendant performs the unlawful act. The defendant may not have had any previous connection with those who would be injured by the bomb, but the threat itself creates the defendant's responsibility for those who will be at risk if he does not give way to the threat."

He continued at paragraph 63,

"So in our judgment the way to reconcile the authorities to which we have referred is to regard the defence as being available when a defendant commits an otherwise criminal act to avoid an imminent peril of danger to life or serious injury to himself or towards somebody for whom he reasonably regards himself as being responsible. That person may not be ascertained and may not be identifiable. However, if it is not possible to name the individuals beforehand, it has at least to be possible to describe the individuals by reference to the action which is threatened would be taken which would make them victims absent avoiding action being taken by the defendant. The defendant has responsibility for them because he is placed in a position where he is required to make a choice whether to take or not to take the action which it is said will avoid them being injured. Thus if the threat is to explode a bomb in a building if defendant does not accede to what is demanded the defendant owes responsibility to those who would be in the building if the bomb exploded."

21. In the New Zealand case of **R. v. Hutchinson** (Court of Appeal of New Zealand, 7th July 2003), referred to in the Crown's skeleton argument, (a case relating to a defendant who sought to justify his criminal actions by reference to the need to protect the environment from a pesticide) the New Zealand Court of Appeal agreed with the judge at first instance that there was a need for strict control of the defence of necessity in such cases. The Court referred, in particular, to dicta in a case concerning civil trespass, **London Borough of Southwark v. Williams** [1971] Ch 734 at 746 (Edmund-Davies LJ):-

"*Well, one thing emerges with clarity from the decisions, and that is that the law regards with the deepest suspicion any remedies of self-help, and permits those remedies to be resorted to only in very special circumstances. The reason for such circumspection is clear, necessity can very easily become simply a mask for anarchy."*

22. In the same case, at page 743, Lord Denning MR had this to say:-

"The doctrine so enunciated must, however, be carefully circumscribed. Else necessity would open the door to many an excuse. It was for this reason that it was not admitted in Reg. v. Dudley and Stephens (1884) 14 Q.B.D. 273, where the three shipwrecked sailors, in extreme despair, killed the cabin boy and ate him to save their own lives. They were held guilty of murder. The killing was not justified by necessity. Similarly, when a man, who is starving, enters a house and takes food in order to keep himself alive. Our English law does not admit the defence of necessity. It holds him guilty of larceny. Lord Hale said that "if a person, being under necessity for want of victuals,

or clothes, shall upon that account clandestinely, and animo furandi, steal another man's food, it is felony …": Hale, Pleas *of* Crown, *i. 54. The reason is because, if hunger were once allowed to be an excuse for stealing, it would open a way through which all kinds of disorder and lawlessness would pass. So here. If homelessness were once admitted as a defence to trespass, no one's house could be safe. Necessity would open a door which no man could shut. It would not only be those in extreme need who would enter. There would be others who would imagine that they were in need, or would invent a need, so as to gain entry. Each man would say his need was greater than the next man's. The plea would be an excuse for all sorts of wrongdoing. So the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the hungry and the homeless: and trust that their distress will be relieved by the charitable and the good."*

THE CROWN'S SUBMISSIONS

23. Mr. Cunningham, on behalf of the Crown submitted that the law requires an objective assessment of the danger and that, on a common sense analysis of the evidence regarding global warming, the defendants' actions were not necessary, could not have been effective for the purpose intended and that the defendants' belief in the need to take such action was unreasonable. It was argued on behalf of the Crown that the evidence does not reveal any imminent threat of death or serious injury to the defendants themselves or to anyone for whom they could properly claim to be responsible.

24. Mr. Cunningham further submitted that necessity was not the *sine qua non* of the defendants' actions, because the closing for a short period of time of the power station would not have been capable of averting the threat perceived by the defendants. He submitted that the court should conclude that the real purpose of the defendants' actions was to draw attention to the defendants' beliefs by way of publicity.

25. Mr. Cunningham referred me to the test identified in **R v Martin** (1989) 88 Cr App R 343 at 345 (see above). This, he said, requires an objective assessment of the danger and an objective assessment of the actions taken by the defendants and the results of those actions. On a common sense analysis, Mr. Cunningham submitted that the belief asserted by the defendants was not objectively reasonable and a sober person of reasonable firmness, sharing the characteristics of the defendants would not have responded to the situation by acting as they did.

26. Referring to the case of **R v Abdul Hussain** [1999] (see above), Mr. Cunningham submitted that the operation of Ratcliffe on Soar Power Station does not carry with it "imminent peril of death or serious injury to the defendants" and the defendants are no**t** responsible for the rest of the population. He said the court should conclude that the peaceful nature of the occupation of the premises demonstrates that the will of the defendants

was not overborne such that they were compelled to act as they did; they simply chose to do so.

27. The facts in the case of **R v Abdul Hussain** [1999], said Mr. Cunningham, are very different from the instant case. The threat to the hijackers was specific to them and their families. In the instant case, he stated, there was no immediacy about the action, no decision in the agony of the moment, no choice between two evils. The actions of the defendants in the instant case, he submitted, would have had a minimal effect on greenhouse gas emissions, did not avoid death or serious injury and could never have had such a result.

28. Mr. Cunningham stated, "In a democracy, members of society expect each other to abide by the law laid down by Parliament and to respect and comply with decisions of judicial or administrative bodies required to resolve disputes. Dilution of that expectation risks undermining the rule of law". His words echo those of Lord Denning MR in London Borough of Southwark v. Williams, referred to above.

DEFENCE SUBMISSIONS

29. The defendants have structured their arguments according to the formula set out in Archbold, set out above. As I have already said, the defendants have aligned themselves firmly together in relation to both facts and law. They each rely on the same facts and the same submissions on the law.

30. The defendants argued that their actions were necessary and / or they reasonably believed they were necessary because of what they believe is the actual and potential harm (death and serious injury) caused by climate change that is brought about or substantially contributed to by carbon emissions from sources such as the coal-fired power station at Ratcliffe on Soar. They acted, they asserted, in the belief that the world is facing a global humanitarian and ecological disaster of previously unheard of proportions. The evidence of Dr. LEWIS, they argued, demonstrates that this belief is a reasonable one.

31. The defendants asserted that the sole purpose of their actions was stopping CO_2 emissions. They acknowledged that there was a demonstration at the gates of the power station that was well attended by the press, but they referred to this as a "separate demonstration" by people who were not on trial. They responded to the Crown's argument by asserting that, if their purpose was publicity, they would have put themselves in a more visible location and attempted to communicate with the press. Their purpose, they asserted, was to shut down the power station to prevent as much CO_2 as possible being emitted. I have found that to be so.

32. The defendants all argued that their actions were reasonable and proportionate when compared to the enormity of the danger. They referred to the fact that they entered the premises in a peaceful fashion and at no

time used any force, violence, or threat of violence. The defendants refer to their feelings of alarm arising from what they learned when they attended the educational week called "Spring into Action" in Nottingham, immediately prior to the date of the alleged offence. They rely on the evidence of Dr. LEWIS as to the effect that global warming, exacerbated by human activity, is already having and his evidence that any reduction in greenhouse gas emissions will contribute to reducing the probability of human loss of life from extreme weather events, etc. They say that they are not a special interest group, but are a group of right thinking individuals who felt compelled to act to save life.

33. On the question of proportionality, the defendants compared their actions to the people who hijacked an aeroplane (R. v. Abdul Hussain, above). If the defence is available to those who take such extreme action, they argued, it must be available to the defendants for their crime, which was peaceful and created no immediate danger to others.

34. The defendants argued that the threat to life from climate change is both imminent and immediate and that the human cost will become much greater as temperatures rise, unless immediate action is taken to cut carbon emissions drastically. They submit that, if the court does not accept the immediateness of the threat, it is nevertheless imminent, because it is hanging over all of us. Reference was made to the Anne Frank analogy referred to by Rose LJ in R. v. Abdul Hussain (above).

35. Ms. BROWN submitted that it was reasonable for the defendants to believe that they have a responsibility towards people who are at risk of dying from the effects of global warming on the climate. She pointed out that there is authority in the case of R. v. Shayler (above) for the proposition that it is not necessary for the defendants to show that they knew the persons under threat. She argued, relying on the evidence of Dr. LEWIS that, on an objective analysis, a link can be established between CO_2 emitted at Ratcliffe on Soar Power Station and deaths already occurring and that extreme weather events were increasing in frequency and intensity.

36. Mr. WOODCOCK, in his submissions, acknowledged that no one person and no one action could prevent climate change happening, but he drew my attention to the evidence of Dr. LEWIS to the effect that CO_2 emissions have a cumulative effect and any reduction in emissions reduces the risk. He pointed out that the Crown had produced no evidence to prove that the actions of the defendants could not have saved lives.

CONCLUSIONS

37. I have listened to all of the defendants in this case giving evidence and to the majority, who are not represented, making erudite submissions on law and fact. They are all intelligent, articulate individuals, who are genuine in their deep-seated fears with regard to the consequences of global warming.

Their arguments have been taken seriously by the Crown, Mr. Cunningham having decided not to pursue an argument that there is no foundation for a defence of necessity in this case. They present as a set of individuals who have a profound social conscience and felt compelled to act as they did after becoming seriously alarmed by what they learned about the effect that CO_2 emissions are bringing about. The peaceful nature of their action was acknowledged by the witnesses who gave prosecution evidence and by Mr. Cunningham on behalf of the Crown.

38. The scope of the defence of necessity is, as I have said earlier, unclear. What I must do is to address the elements of the defence that have been identified in the case law that has been drawn to my attention and to form conclusions in respect of those elements on the facts that I have found in the instant case. The analysis in Archbold forms a sensible framework for this as a starting point.

39. The first question is whether the defendants' actions were necessary, or reasonably believed by them to have been necessary for the purpose of avoiding or preventing death or serious injury to themselves or another or others. This also imports the question of whether the defendants can properly regarded as responsible for protecting any person who might be at risk of death or serious injury from an extreme weather event.

40. My conclusion, on the facts that I have found, is that the defendants' actions cannot be regarded in law as necessary in the context of the defence of necessity. I have no doubt at all, having heard the alarming evidence of Dr. LEWIS, that there is an urgent need for drastic action to be taken globally to reduce greenhouse gas emissions. This, however, is a matter for political control and concerted action by the governments of responsible countries.

41. In considering the defence of necessity, it is relevant to have regard to the timescale over which the peril operates and to all of the circumstances of the peril, including the number, identity and status of those creating it, and the opportunities which exist to avoid it (per Rose LJ in R. v. Abdul Hussain, referred to at paragraph 18, above). The timescale, with regard to the human contribution to global warming, began with the industrial revolution and will continue for decades. The peril was created by global human activity, predominantly in the industrialised countries. There is an existing international protocol and international negotiations continue concerning necessary action to deal with the problem. These are all factors that I have considered in concluding that it was not necessary for the defendants to take the action they did.

42. It is impossible on the evidence before the court, in my judgment, to conclude that preventing emissions from Ratcliffe on Soar Power Station for several hours would in fact result in preventing any death or serious injury to a person from happening. The evidence of Dr. LEWIS, alarming though it was, concerns probabilities. It is impossible, on that evidence, to link CO_2 emissions from any particular source to any particular extreme

weather event. The emissions from Ratcliffe over a period of hours are miniscule when compared to global emissions. It was clear from prosecution evidence that, if the defendants had been successful in their aim, the company operating the power station would have simply generated the lost electricity elsewhere, which may have resulted in a net increase or a net reduction in overall emissions of greenhouse gases; I found it impossible to form any conclusion on that. Even if the defendants had prevented emissions for several hours at Ratcliffe and such emissions had not been compensated for elsewhere, it would have been impossible to demonstrate that any particular lives would be saved, or any particular serious injury would be prevented, by that alone.

43. I am, however, satisfied, as should be evident from my findings of fact, that each of the defendants actually did believe that the action they took was necessary and believed that what they intended to achieve was capable of influencing the probability of extreme weather events, whether by way of occurrence or intensity thereof, such that some person or persons somewhere at some time might be saved from death or serious injury. I entirely accept that, on the evidence of Dr. LEWIS it is reasonable to suppose that there is a causal link between CO_2 emissions and extreme weather events causing death and serious injury and that it is reasonable to believe that, on a global scale, people are dying now and will die in the future as a result of such events. In that sense, the belief of the defendants was reasonable, but in the sense that the defendants believed it was their responsibility to take the action such as they did, it was not a reasonable belief.

44. Although I am satisfied that, subjectively, the defendants genuinely believed it was necessary for them to take some action to reduce emissions of CO_2, I am not satisfied that they did so because the peril operated on their minds so as to overbear their will in the sense referred to by Rose LJ at paragraph 4 of his summary of the law on this subject in R. v. Abdul Hussain (see paragraph 18, above). I have concluded on the evidence of the defendants that their will was fuelled by their knowledge of the peril rather than overborne by it.

45. I have taken into account the remarks of Lord Woolf CJ at paragraphs 49 and 63 of his judgment in R. v. Shayler (above) on the question of whether the defendants can properly regard themselves as having a responsibility to act. The scenario quoted by Lord Woolf is very different from the instant case. Where a person threatens to detonate a bomb unless a defendant performs an unlawful act, there is clearly a risk to life and limb that depends on the defendant's actions and it is clear and obvious that a defendant would be justified in taking responsibility for avoiding that risk, even to persons whose identity was not known. In contrast with that scenario, global warming is being brought about as a result of the cumulative actions of human societies around the world. Responsibility for ameliorating the situation, to limit its consequences, is a communal responsibility that must be exercised through good governance. Although I accept that each individual has a responsibility to contribute so far as

possible to the reduction of greenhouse gas emissions in his personal life, this cannot, in my judgment, extend to interference with a national electricity supply system on the basis that the individual feels responsible for those who suffer from climate change.

46. The Anne Frank analogy, referred to by Rose LJ in R. v. Abdul Hussain, and to which the defendants have drawn my attention, represents a wholly different scenario to the threat from global warming. That was a specific threat to a specific group of people within a particular geographical area in which they were effectively trapped. The threat was to Anne Frank herself, as well as her family, and an attempt to escape would have been a real alternative to running the risk of continuing to hide.

47. My conclusion on the second question in the Archbold formula, as to whether necessity was the *sine qua non* of the commission of the offence, is apparent from my findings of fact. The defendants in their evidence have persuaded me that their aim was to prevent CO_2 being emitted from Ratcliffe Power Station in the belief that this could save life. They acknowledged in their evidence that there was a contemporaneous demonstration, mounted by others at the gates of the power station, but they distanced themselves from the group involved in that. Other than the coincidence of the two events taking place together, which is a compelling coincidence, there was no evidence linking the two. The defendants, in their evidence, agreed that publicity arising from their actions was inevitable, but they were adamant that publicity was not their aim.

48. The third question, following the formula in Archbold, is whether the commission of the offence, viewed objectively, was reasonable and proportionate, having regard to the evil to be avoided or prevented. My conclusion on this follows on from my conclusion on the first question.

49. It is clear beyond doubt that the evil to be avoided or prevented, being the catastrophic effects of global warming, is enormous. The actions of the defendants, as they have emphasised throughout, were performed in a peaceful and completely non-violent way. Indeed, I detected a hint of what might be described as guarded understanding, if not sympathy, for their cause in the responses of prosecution witnesses to certain questions, particularly with regard to certain defendants being advised to move their positions for their own safety. No-one, other than the defendants, was put in danger by the defendants' actions. If the defendants' actions had been objectively reasonable and necessary, therefore, they would have been proportionate, having regard to the enormity of the threat from global warming.

50. I am not satisfied, however, that the actions of the defendants, viewed objectively, were either necessary or reasonable. As I have previously stated, the evidence did not satisfy me that the defendants' actions, even if they had achieved what they set out to do, would have been capable of having an identifiable effect on saving life or serious injury. Furthermore, adopting the formula proposed in the extract from the judgment in R. v.

Martin (above), I am not satisfied that a sober person of reasonable firmness, sharing the characteristics of the defendants, would have responded to the situation by acting as the defendants did. A reasonable person would not, in my judgment, consider himself compelled to act as the defendants did in the current situation.

51. There is still, as Dr. LEWIS acknowledged, a great deal of debate and disagreement about the whole issue of global warming and what should be done about it, although the science seems now to be firmly established. Taking action is the responsibility of those in government. Reasonable people may take action to limit their own "carbon footprint" and may campaign for more urgent action by governments, but attempting to stop a large power station from functioning is, in my judgement, a step too far for the reasonable person. If the law permitted the type of action taken by the defendants in this case, it would authorise a route to chaos. As Edmund-Davies LJ said in London Borough of Southwark v. Williams (above), "….*necessity can very easily become simply a mask for anarchy*".

52. The defendants have argued that they were responding to a peril that is both immediate and imminent (as interpreted by the Court of Appeal in R. v. Abdul Hussain). I have found as a fact, on the unchallenged scientific evidence that the impact of CO_2 emissions from human activity has doubled the probability of an extreme weather event. Extreme weather events kill many thousands of people across the world at the present time and the threat is an increasing one. To that extent, therefore, there is a very substantial peril that is both immediate and imminent in the sense that it is hanging over us.

53. Mr. Cunningham argued that the imminent peril of death or serious injury would have to emanate from the operation of Ratcliffe on Soar Power Station for the defendants actions to be justified. There is logic in the defendants' argument, based on the evidence of Dr. LEWIS, that any significant contribution to CO_2 emissions will increase the probability of adverse effects resulting from the level of that gas in the atmosphere. However, that chain of reasoning does not, in my judgment, sufficiently establish that life would have been saved by preventing the operation of that particular power station for a limited period. Dr. LEWIS made it clear that it was not possible to attribute any particular extreme weather event to any particular human activity; it is all a question of probabilities.

54. Any right thinking person would, I am sure, share the defendants' concerns about global warming. Indeed, I believe that the majority of people who examined the scientific evidence in as much detail as has been put before this Court would share the defendants' fears. In my judgment, however, the actions the defendants took were not legally justified.

55. I am satisfied so that I am sure that each of the ten remaining defendants committed the offence charged. I am equally sure, on the evidence I have heard and the facts I have found, that the defendants' offence was not justified under the law relating to the defence of necessity. Accordingly, I find each of the ten defendants guilty of the offence charged.

Morris Cooper
District Judge (Magistrates' Courts)

25th February 2008.