

**IN THE WESTMINSTER MAGISTRATES COURT**

**BETWEEN**

**REGINA**

**Prosecutor**

**-and-**

**STEVEN JAMES MELIA**

**Defendant**

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**SKELETON ARGUMENT**

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**A. Introduction**

My name is Dr Steven Melia. I am 57 years old. I am a Senior Lecturer in Transport and Planning. For several years I have been teaching students about transport and climate. This has obliged me to read extensively about climate change and the UK's response to it. I have advised government departments, local authorities and political parties on how to plan for transport and development in a more sustainable way.

I am not a lawyer, I have chosen not to be legally represented, and I may not be able to explain my defence in correct legal terminology. I decided to take action because of what the international scientific consensus is telling us about the urgency of the threat, and because the actions taken by the UK government have been falling a long way short of what would be needed to avert it.

When the house is on fire the normal rules cease to apply: it is not a crime to break a window to save those inside.

**B. The Section 14 Orders (POA) and Arrests**

As my barrister explained at the committal hearing, I do not accept everything contained in the Community Impact Statement (and some of the statements would be impossible to prove or disprove). Nonetheless, I do accept the most relevant point for the purposes of this trial: that there was significant disruption and therefore the Section 14 order was lawful. There should be no need to call a senior police officer to interrogate that point.

I was fully aware of the Section 14 orders and deliberately chose to defy them in a symbolic way, refusing to move until I was arrested, then walking away with the officers, making no resistance. There should be no need to call police officers to confirm those facts.

## **C. Legal framework**

### **C.1 Case-law**

My defence is based on long-established principles of common law that it is not a crime to take reasonable and proportionate action to prevent the occurrence of a far greater harm. In [R v Martin \[1989\] R.T.R. 63](#), the appellant had driven whilst disqualified from driving. He claimed he did so because his wife threatened to commit suicide if he did not drive their son to work. His wife had attempted suicide on previous occasions and the son was late for work and she feared he would lose his job if her husband did not get him to work. The appellant pleaded guilty to driving whilst disqualified following a ruling by the trial judge that a defence was not available to him. He appealed the ruling to the Court of Appeal, which accepted his appeal, explaining the defence of “duress of circumstances” as follows:

(1) *“[W]as 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 injury would result”*

◦ (2) *“[I]f so, would a sober person of reasonable firmness, sharing the characteristics of the accused, have responded to that situation by acting as the accused acted?”*

Climate change is already causing deaths and injury from extreme weather events around the world. The scientific evidence and the evidence on national carbon emissions tell us that continuing current policies and practices will rapidly increase deaths and injury due to climate change. It would be unreasonable to ignore those warnings.

Lord Goff in [In re F<sup>1</sup>](#), a House of Lords case from 1990, concerning the sterilisation of a woman who was unable to give her consent to the procedure, referred to a principle going back at least to the 1666, Fire of London:

*“That there exists in the common law a principle of necessity which may justify action which would otherwise be unlawful is not in doubt. But historically the principle has been seen to be restricted to two groups of cases, which have been called cases of public necessity and cases of private necessity. The former*

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<sup>1</sup> [1990] 2 AC 1]

*occurred when a man interfered with another man's property in the public interest – for example ... the destruction of another man's house to prevent the spread of catastrophic fire, as indeed occurred in the Great Fire of London in 1666 ...*<sup>2</sup>

The court will have read about the growing impacts of climate change: devastating wildfires from Europe to California, and even this summer in the Arctic Circle<sup>3</sup>. The Earth is our collective home and it is burning.

In the case of *Re A* (conjoined twins)<sup>4</sup>, the Court set out the key principles to be applied to a defence that the lesser of two evils was being avoided, where one of two conjoined twins would lose their life following a separation procedure:

*“There are sound reasons for holding that the existence of an emergency in the normal sense of the word is not an essential prerequisite ....*

*There are also sound reasons for holding that the threat which constitutes the harm to be avoided does not have to be equated with “unjust aggression” ...*

*According to Sir James Stephen, there are three necessary requirements for the application of the doctrine of necessity:*

*(i) the act is needed to avoid inevitable and irreparable evil;*

*(ii) no more should be done than is reasonably necessary for the purpose to be achieved;*

*(iii) the evil inflicted must not be disproportionate to the evil avoided.*

*... I consider that all three of these requirements are satisfied in this case.*<sup>5</sup>

Taking action to prevent mass loss of life from climate change, in accordance with the best available science, meets all three of these tests.

## **C.2 Direct precedents**

In 2008, 6 climate change activists were acquitted of causing criminal damage to a coal-fired power station on the basis that their actions were a reasonable response to the threat from climate change<sup>6</sup>.

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<sup>2</sup> Ibid. para. 74A-C

<sup>3</sup> “Sweden battles wildfires from Arctic Circle to Baltic Sea”, BBC, 18 July 2018. Exhibit 2: <https://www.bbc.co.uk/news/world-europe-44871789>

<sup>4</sup> [2001] 2 WLR 480

<sup>5</sup> See the conclusion of the lead judgement of Lord Justice Brooke

<sup>6</sup> “Not guilty: the Greenpeace activists who used climate change as a legal defence”, The Guardian, 11 September 2008, Exhibit 3: <https://www.theguardian.com/environment/2008/sep/11/activists.kingsnorthclimatecamp>

On 9 May 2019, at Southwark Crown Court, a jury found two Extinction Rebellion activists not guilty of causing £7,000 worth of criminal damage. The activists admitted causing the damage but argued their actions were a proportionate response to the climate emergency.

#### **D. My belief that we are in a state of emergency and the basis for that belief**

The 2018 report from the International Panel on Climate Change [\*Special Report on Global Warming of 1.5 °C\*](#) sets out the consequences of global temperatures rising 1.5 °C above pre-industrial levels and how those consequences progressively worsen beyond 1.5 °C.<sup>7</sup> The consequences include: melting of polar ice, sea level rise, heat waves, heavy rain, drought and associated wildfires, and coastal flooding. They are likely to provoke mass migrations of peoples away from affected areas. Many of the relationships are non-linear and some are irreversible. Beyond 1.5 °C of warming there is a greatly increased risk of ‘tipping points’, such as the melting of permafrost, which would cause global heating to accelerate beyond the capacity of humans to manage or effectively respond.<sup>8</sup> Those are the catastrophic scenarios which we must avoid at all costs.

To prevent global temperatures exceeding the 1.5 °C threshold, the IPCC report states that global carbon emissions would need to be cut by 45% by 2030, falling to net zero by 2050. Those are global totals. The Paris agreement allows more latitude for developing countries, which means that developed countries including Britain would need to cut more quickly. Four years after the Paris Conference, global emissions were continuing to rise.<sup>9</sup>

As set out on the attached witness statement, the actions taken by the UK government so far fall well short of those requirements. In April 2019, when we took our actions, Prof. Ekins says:

“there had been a standstill in government policy on climate change for nearly three years.”

I will also present evidence from my own field, showing how current UK transport policies are undermining efforts to reduce emissions in other sectors. Even if all those other sectors were to implement the recommendations of the Climate Change

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<sup>7</sup> IPCC, 2018, Special Report: Global Warming of 1.5 °C Summary for Policymakers. <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>

<sup>8</sup> ‘Tipping points’ could exacerbate climate crisis, scientists fear. The Guardian, 9 Oct 2018, Exhibit 4: <https://www.theguardian.com/environment/2018/oct/09/tipping-points-could-exacerbate-climate-crisis-scientists-fear>

<sup>9</sup> UN Environment. Emissions Gap Report 2018. <https://www.ipcc.ch/site/assets/uploads/2018/12/UNEP-1.pdf>

Committee the actions of the Department for Transport alone would prevent the UK from complying with the Paris Agreement.

The Climate Change Act (2008) would be a very difficult law for the courts to enforce (even if the courts had effective powers to compel governments to act, which they do not). As Prof. Ekins says:

“Policies require long lead times to be introduced and implemented, and tend to take effect relatively slowly.”

If we wait until the UK has missed a carbon budget, the situation will be too late to rectify. The “get out clause” of purchasing credits overseas would only be effective if other countries were reducing faster than the science suggests. Such a scenario seems extremely unlikely given the recent history of global failure on this issue.

### **E. Could the ‘Greater Evil’ be Averted by Legal Means?**

The appendix list some of the actions I have taken, and continue to take, over the past 22 years to avert a climate catastrophe through legitimate means.

Many local authorities and other organisations such as universities have now declared a climate emergency. By contrast, central Government has been so weakened and distracted that it was paying little attention to the crisis before April 2019. It has made no attempt to educate the public and has not begun to develop an emergency plan. Many of its actions are increasing carbon emissions and moving the country in the wrong direction.

As the expert evidence makes clear, by early 2019 all the efforts made by people working within government, industry, academia and civil society were insufficient. Global emissions were continuing to rise and there was no realistic prospect that UK governments would take the radical action needed to comply with the Paris Agreement. That is why I believe that civil disobedience is now necessary to ensure that the government complies with its own laws (and strengthens them where necessary).

### **F. Causality - How are my actions helping to avert tragedy?**

The intention of non-violent direct action is to ensure that the government and the public face up to the crisis and act on the advice of the scientists in sufficient time.

Opinion polls have shown how public concern about climate change surged in late April 2019 following Extinction Rebellion's actions and the media coverage it generated.<sup>10</sup>

I have occasional dealings with people who work within government. Some of them have told me that the actions of Extinction Rebellion (along with the school strikes and the involvement of Greta Thunberg) have transformed the perceptions and discourse around climate change within government. That changing political climate has been reported by some newspapers.<sup>11</sup>

Two of Extinction Rebellion's demands during those actions were for the government to declare a climate emergency and convene a citizens' assembly to decide on how to make the necessary changes. The government has not yet responded in the way we demanded, but parliament has, providing evidence of a direct link between our actions and official actions to avert the 'greater evil'.

As a direct result of the protests a climate emergency has now been declared by Parliament.<sup>12</sup>

Six parliamentary committees have joined forces to convene a citizens' assembly to advise them on the measures the UK should take to achieve carbon neutrality.<sup>13</sup>

## **F. Conclusion**

I have studied protest movements and I am unable to draw any general rules that demonstrate *a priori* which tactics will succeed and which ones will ultimately fail. So I do not know whether Extinction Rebellion's tactics are the most effective, but I do know that conventional politics stand no chance against an existential crisis requiring urgent action with unwelcome consequences for the public and business interests.

I am less concerned about the verdict than I am about your understanding of the crisis we face – 'you' being the judge, the prosecutors and anyone else who reads this afterwards. Do you have family, friends, people who matter to you who will live longer than you? Do you ever worry about their future? Have you ever considered what impact climate breakdown might have on the rule of law?

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<sup>10</sup> Guest post: *Polls reveal surge in concern in UK about climate change*. Carbon Brief, 10 May 2019. Exhibit 5: <https://www.carbonbrief.org/guest-post-rolls-reveal-surge-in-concern-in-uk-about-climate-change>

<sup>11</sup> Extinction Rebellion protests have WORKED as MPs succumb to calls for change" Daily Express, 25 April, 2019. Exhibit 6: <https://www.express.co.uk/news/uk/1117913/extinction-rebellion-news-latest-london-protests-climate-change-mps-succumb-demands>

<sup>12</sup> UK Parliament declares climate change emergency. BBC News, May 1 2019. <https://www.bbc.co.uk/news/uk-politics-48126677>

<sup>13</sup> Select Committees announce plans for Citizens' Assembly. Commons Select Committees 20 June 2019. <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/news-parliament-2017/climate-change-and-net-zero-chairs-comments-17-19/>

Extinction Rebellion has been criticised as a middle-class privileged protest movement – and there is a grain of truth in that. But don't we, who have the education to comprehend and positions to influence, have the greatest responsibility to act to stop this insanity?

STEVEN JAMES MELIA

July 2019

## Personal Actions Taken to Avert Climate Change

I have spent 22 years working in many ways to combat the threat of climate change. I cannot remember them all, so this list is not exhaustive.

### Through My Work (2010 to date)

Most of my research and writing has concerned attempts to reduce driving and/or flying. Some of my writing has explicitly concerned climate change. I have advised: the Department of Transport, H M Treasury, the Greater London Assembly, the Green Party, the Labour Party and several local authorities on these issues. In 2007, as a PhD student, my advice was incorporated into the transport guidance from the Department of Transport and Communities and Local Government for the Eco-towns programme. Since 2017 I have been running conferences and providing evidence for local authorities interested in traffic removal from urban areas. See: [www.trafficremoval.uk](http://www.trafficremoval.uk).

For the past 7 years I have taught students studying Climate Change and Energy Management. This has required me to study and keep up to date on the science of climate change and UK carbon emissions. Reading the reports of the IPCC and the UK Climate Change Committee has caused me growing anxiety about the seriousness of the threat and our inadequate response to it.

### As a Citizen

**1997**, as parliamentary candidate, I proposed a successful motion to the Liberal Democrat national conference, which committed the party to a cap and gradual reduction in the volume of flights from UK airports.

**2002 - 2005** – I was on a local forum working with developers and two local authorities, pressing for Sherford, the new settlement planned in South Devon, to reduce its car dependency and increase the energy efficiency of the planned new housing.

**2005** – I set up a local branch of Friends of the Earth, which spent much of its early efforts on *The Big Ask* – the campaign of lobbying MPs which led to the enactment of the Climate Change Act (2008)

**2006** – I went on a march in London organised by the Stop Climate Chaos coalition, calling on the government to support climate legislation and press for stronger international action at the forthcoming Nairobi conference.

**2007 - 8** - I took part in a panel advising local Conservative M.P. Gary Streeter on climate change, in the run-up and early response to the Climate Change Act.

**2009** – I went on the march in London which preceded the International conference on climate change in Copenhagen.

**2014** - I went on the march in London which preceded the International conference on climate change in Paris.

**2017** - I gave evidence as an expert witness for the objectors at the public inquiry into the M4 Relief Road.

**2018** - I wrote to my M.P. urging her to vote against the Airports National Policy Statement with its commitment to a third runway at Heathrow (she did, but the Statement was approved.)

**2019** - my wife and I donated money to Friends of the Earth to help fund their appeal against the rejection of the judicial review against the Airports National Policy Statement.

I have recently submitted an objection to the planning application to expand Bristol Airport and have been giving a series of talks to affected communities about aviation and climate change.

### **Personal Behaviour**

I have also changed my personal behaviour. In 2005 I decided to stop flying. I have flown once for essential work purposes since then – I have always refused to fly to conferences, turning down an “all expenses paid” offer to fly to Australia – to address a conference about ‘reducing energy consumption from transport’ on one occasion.

In 2009, when I moved to Bristol for my current job, I gave up driving, and have never driven a vehicle since then.