

IN THE MANCHESTER MAGISTRATES' COURT

BETWEEN:

REGINA

– v –

BORIS ROSCIN

JOHN WASILEWSKI

DAVID COHEN

1. Boris Roscin, John Wasilewski and David Cohen are each charged with a single offence of aggravated trespass contrary to Section 68 Public Order Act 1994 arising from their actions on the afternoon of 18th February 2014. They have each pleaded not guilty, the issue for the trial in each case being whether they were at the material times trespassers on the land in question which was a public footpath and private road.
2. It is of course for the prosecution to prove all elements of the offence against each defendant, and to prove them to me so that I am sure of their guilt. I have heard that all three defendants have no previous convictions. Whilst good character is not a defence to the charges it is relevant to my consideration of the case in two ways. First, each defendant has given evidence. Their good character is a positive feature of each defendant which I take into account when considering whether I accept what they told me. Secondly, the fact that the defendants have not offended in the past may make it less likely that each one of them acted as is now alleged against them by the prosecution.
3. That land is at Barton Moss Road, which is just off the A57 after it passes under the M60 going west. IGas Energy, a shale gas exploration company, had permission from the relevant authorities to conduct exploratory drilling at a site in at the end of Barton Moss Road ('the drilling site').

4. It is accepted that Barton Moss Road is a private road crossing private land. It is also a public footpath.
5. In 2013 when IGas sought to construct the drilling site and conduct exploratory drilling they were met by protests from environmentalists and others opposed to the company's activities. On a number of occasions prior to 18th February (the date of these alleged offences) protesters have obstructed and disrupted heavy goods vehicles delivering items to, and removing items from, the site. These obstructions mainly (although not exclusively) took one of two forms:
 - a. Protesters stand, sit or kneel in the middle of the road and refuse to move; or
 - b. Protesters walk down the road as a group at a slow pace.
6. The result of this action is to disrupt the running of the site and in particular cause delay and obstruction to the vehicles seeking to access the drilling site.
7. At 4:00 pm on 18th February there were about 30-40 protesters present outside the drilling site on Barton Moss Road. Many of them had been in the area all day, moving up and down Barton Moss Road. There had been difficulties that morning in getting vehicles onto the site, the one mile journey from the A57 to the drilling site taking nearly two hours. I heard evidence that the police hoped to manage the protesters so that the journey could be completed in 20-30 minutes.
8. At 4pm, a convoy of vehicles was about to set off from the IGas drilling site. The vehicles were held inside the perimeter fence whilst the Police who were present on Barton Moss Road started to move the group of protesters who were stood in front of the entrance to the site.
9. Inspector Kernain was in charge on the ground, and I have heard from him and seen video images of this part of the operation. Despite highly disruptive techniques employed by a number of protesters (although not the three defendants) he sought to explain to the group that the vehicles were about to exit and that he required the protesters to start moving down Barton Moss

Road away from the drilling site. He explained to them that if they did not comply then they may be arrested.

10. The protestors did not move and so the police formed a single line cordon of uniformed officers who started to move down the road in order to clear it ready for the lorries to exit the drilling site. The majority of the protesters, including Mr Cohen and Mr Wasilewski started to comply with the police request and move down Barton Moss Road.
11. As the line approached him, Boris Roscin knelt down in the road, displaying a sign with the words 'What will you tell your Grandkids?' and with a plate of doughnuts in front of him, and placed his arms behind his head. Probably to Mr Roscin's surprise, the police line passed over him without incident and he remained in the same position, gloriously on his own. At about this time, the main group having moved off down the road in front of the police line, the first of the HGVs emerged from the drilling site and started the turn down Barton Moss Lane towards the A57. Mr Roscin stayed in the same position for about a minute, and was then approached by PC O'Connell. To his credit, PC O'Connell was a model of politeness. He tried to ask Mr Roscin to move to the side of the road to allow the lorry to make its way down the road, but it is clear from the video that Mr Roscin was not interested in what the officer had to say. Mr Roscin held up a piece of paper and kept repeating that he was 'not part of a group' that he was on a footpath and did not consent. PC O'Connell tried to explain to Mr Roscin why he needed him to move, to allow the lorry to pass safely, but Mr Roscin tried to talk over him constantly, repeating his 'mantra' over and over again. After a number of attempts to reason with Mr Roscin, PC O'Connell warned Mr. Roscin that he was committing an offence, but that warning was ignored and Mr. Roscin repeatedly told the Officer that he did not recognise the Officer's authority. When told that he was committing an offence and that he would be arrested he said, *"I do not understand and I do not consent to being kidnapped"*.
12. When he still refused to move he was arrested and taken to the side of the road. To the credit of both the officer and Mr Roscin, there was no struggle.

13. Throughout this time, the first HGV was waiting for Mr Roscin to clear the road so that it could start its journey to the A57 behind the line of police.
14. Meanwhile the line of other Police Officers had started to move forwards down Barton Moss Road and the protesters began to move in front of the Police line. Both Mr Cohen and Mr Wasilewski were part of this larger group, although were not together.
15. Progress down the road was slow and noisy, with a significant number of the group trying to film proceedings. A number of these (not including the two defendants) were in the way of others and were slowing the progress of the group overall. There did not appear to be any officers ahead of the police line or alongside the protesters trying to set a pace.
16. Mr Wasilewski can be seen using his phone to take pictures of the scene, focusing on the advancing police line. Mr Cohen appears to link arms with a woman about two metres ahead of the police line and start walking towards the A57 at a slow but steady speed. Once the group started moving, progress appears to continue for some distance in a similar manner (slow but steady). One officer on the tannoy is heard to thank the protesters for their co-operation.
17. After some time and distance, just as the group is approaching the first of the protesters caravans which were parked in Barton Moss Road, the progress of the group stalls. The cause of this appears to be an attempt by some protesters (but not either defendant) to climb over a fence to get behind the police line. At this point the Police also seem to change tactics, replacing the officers in the moving cordon with officers from the Level 1 TSU, who until this point had been following the convoy down the road in their van. PC Genge, an officer with that unit, explained to me that they would only normally be deployed 'if there were problems'. These officers can be identified on the CCTV as wearing flat police hats, rather than the traditional custodian helmets worn by the Level 2 officers.
18. As soon as the Level 1 officers take over the cordon, the situation changes. Those officers are keen to increase the speed of the walk considerably and as a

result the group of protesters starts to bunch up. The road is also narrower at this point, putting further pressure on the group. Both Mr Cohen and Mr Wasilewski are seen to continue walking, but because of their slower speed they get closer to the police cordon. I cannot be sure that this is deliberate.

19. As they moved, forward Mr Wasilewski found himself immediately in front of the police cordon, and more specifically in front of PC Genge who gave evidence in this case. PC Genge stated that Mr Wasilewski began to push back into the Police line. It was explained to him by PC Genge that if he was struggling with the pace he should step to the side of the road. Over approximately five minutes PC Genge states that Mr Wasilewski was repeatedly told to keep the pace up by the officers. PC Genge then states that he gave him one last warning, and when Mr Wasilewski ignored that warning and again (according to PC Genge's evidence) pushed back he was then pulled back through the police cordon and arrested.
20. Mr Cohen can be seen in the early stages of the slow walk to have his right arm linked with other protesters but making good progress within the main group. However, again after the Level 1 officers took over the cordon, he can be seen to be getting closer to the Police line, linking arms with a different protestor. He ends up in front of PC Genge, who again stated that he was pushing back into him. PC Genge states that Mr Cohen was warned a number of times, but continued to push back into the Officer. At this point Mr. Cohen was also told that if he was struggling to keep up he should step to the side of the road. He did not answer and, according to PC Genge, kept pushing back into the officer. According to PC Genge, he was pushing back so hard in fact that he caused the line of Officers to bend and, having failed to respond to the warnings he had been given, Mr Cohen was then arrested.
21. Having reviewed the video evidence showing both incidents, I have to conclude that I cannot be sure that either Mr Wasilewski or Mr Cohen was pushing back in the manner described by PC Genge. More likely, both defendants wanted to maintain a slower walking pace than that which the Level 1 police cordon sought to impose upon them. Whilst this might have felt like resistance to the officer, I do

not think that this was a deliberate or reckless attempt to 'push back' into the officer, but simply an unwillingness or inability to accept the faster speed.

22. There has been some argument as to whether such resistance was due to an unwillingness to increase the pace of movement, or if either or both defendants could not do so because of the bottle-neck in front of them. Having reviewed the evidence, I am satisfied that it was the former. Sufficient space did exist at different times for both to increase their pace to walk at the speed requested of them by the officers, but at no time did either defendant show any inclination so to do.

The Law

23. Aggravated Trespass is a statutory offence under *section 68 Public Order Act 1994*, the relevant parts of which provide that:

i. *A person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does there anything which is intended by him to have the effect:*

(i.a) Of intimidating those persons or any of them so as to deter them or any of them from engaging in that activity;

(i.b) Of obstructing that activity; or

(i.c) Of disrupting that activity.

.....

ii. *Activity on any occasion on the part of a person or persons on land is "lawful" for the purposes of this section if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.*

.....

24. The question of whether or not the Defendants had exceeded their right to use the public footpath, thus rendering them trespassers, has been judicially

considered in the leading case of *Margaret Jones v. The Director of Public Prosecutions* [1999] 2 A.C. 240:

25. Prosecuting Counsel has directed the court to three paragraphs which they say (and Defence Counsel agree) accurately summarises the law

- a. The use “*may in fact extend, to a limited extent, to roaming about on the highway, or remaining on the highway. But that is not of the essence of the right. That is no more than the scope which the right might in certain circumstances have, but always depending on the facts of the particular case. On a narrow footpath, for example, the right to use the highway would be highly unlikely to extend to a right to remain, since that would almost inevitably be inconsistent with the public's primary right to pass and repass*”, per Lord Irvine of Lairg L.C. at page 256;
- b. “*A public highway is a public place which the public may enjoy **for any reasonable purpose** (my emphasis), provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway*”, per Lord Irvine of Lairg L.C. at page 257
- c. “*So far as the manner of the exercise of the right is concerned, any use of the highway must not be so conducted as to interfere unreasonably with the lawful use by other members of the public for passage along it. The fundamental element in the right is the use of the highway for undisturbed travel...the necessity also is that travel by the public should not be obstructed. The use of the highway for passage is reflected in all the limitations, whether on extent, purpose or manner. While the right to use the highway comprises activities within those limits, those activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with that use even if they are not strictly ancillary to it*”, per Lord Clyde at page 281.

26. The essence of the test is set out at sub-paragraph (b) above. The prosecution has to prove to me, so that I am sure, that each of the defendants were acting unreasonably, and that in so doing the activity of that defendant amounted to a public or private nuisance and obstructed the highway by unreasonably impeding the primary right of the public to pass and repass. If the Prosecution can prove this, then the defendant would fall to be treated as a trespasser on the land, and I would need to consider the second element of the offense, namely whether the defendant did anything which was intended by him to have the effect of intimidating those persons carrying out the lawful activity on the land (that is to day the exploratory drilling for shale gas) or acting so as to deter them from engaging in that activity, or of obstructing or disrupting that activity
27. I have also been directed to other relevant case law, and in particular
- a. Harrison v The Duke of Rutland [1893] 1 QB 142;
 - b. G v Federal Republic of Germany (Application 13079/87);
 - c. Sergi Kunetsov v Russia ECHR (Application 10877/04); and
 - d. Manchester Ship Canal Developments Ltd, Peel Investments Ltd v Persons Unknown, Samede, Thomas-Browne [2014]EWHC 645 (Ch).
28. It is worth noting that this latter case was heard before His Honour Judge Pelling QC sitting as a judge of the High Court in the Manchester District Registry and concerned the same land on which these alleged offences occurred. Paragraphs 28 to 37 of that judgment provide a thorough review of the law in relation to Article 10 and 11 defences, albeit within the ambit of a civil claim for the possession of land.
29. In G v Federal Republic of Germany, an ECHR case which considered the matter of Article 10 and 11 rights and the balance that has to be struck with the rights of others when creating an obstruction of a highway through protest, the Court found that G had been punished, not for demonstrating but *'for particular behaviour in the course of a demonstration, namely the blocking of a public road, thereby causing more obstruction than would normally arise from the exercise of the right of peaceful assembly...However, balancing the public*

interest in the prevention of disorder and the interest of the applicant and the other demonstrators in choosing a particular form of sit-in, the applicant's conviction for the criminal offence of unlawful coercion does not appear disproportional to the aims pursued'.

30. The European Courts have long recognized that lawful protests can and frequently do cause some disruption to ordinary life. In *Kuznetzova v Russia* the ECHR reiterated:

"that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance...Accordingly, the Court is not satisfied that the alleged obstruction of passage, especially in the circumstances where the applicant gave evidence of his flexibility and readiness to cooperate with the authorities, was a relevant and sufficient reason for the interference...the Court reiterates that any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."

31. It is settled law that peaceful protest on a highway can and often does amount to reasonable use. The acid test in this case is whether each of the defendants was acting reasonably at the time, conducting the balancing exercise of the right of peaceful assembly against the rights of others to go about their lawful business on the highway.

32. There are clearly many factors which affect that test of reasonableness.
- a. This was both a public footpath and a private road. Vehicles had access not just to the drilling site, but to other places on Barton Moss Road. It was a relatively well-maintained, largely single track road with some passing spaces.
 - b. Protesters had been active on the site for at least 3 months. Some were living on or near the road. The protesters were not a group of fixed membership. Several members (including these three defendants) came and went from the site at different times and for different durations.
 - c. Various 'tactics' had been employed by the protesters over this time in order to express their opposition to the test drilling, including the slow walk to and from the A57 and drilling site, locking on to vehicles using chains and padlocks, lying down in the road, and general obstruction.
 - d. The arrival of staff and vehicles onto and leaving the drilling site down Barton Moss Road was one of the few opportunities that the protestors had to interact with the drilling activities since the drilling site itself was securely fenced.
 - e. The police seemed content with the idea of the slow walk to and from the A57 as a reasonable form of protest. On 18th February the police formed a cordon in order to walk the protesters the length of Barton Moss Road. It is worth observing that Barton Moss Road continued beyond the drilling site and it was an option for the police to corral the protesters away from the direction the lorries had to travel to the A57; notwithstanding this the police were content to marshal the protesters along the length of Barton Moss Road.
 - f. It is not clear if there was any consistency in the policing of this slow walk, nor if that had been communicated at any stage to the protesters. I heard evidence that on occasions (including the journey on the morning of 18th February) the travel time was about 2 hours for the one mile journey, and that sometimes it was nearer 15 minutes. On the day

in question the journey from the drilling site to the A57 took just under 20 minutes.

- g. The initial stage of the walk on the afternoon appeared to be satisfactory to the police. The Level 1 officers had not been deployed, and an officer was heard to thank the group for their co-operation as they moved down Barton Moss Road. The progress only halted because of the actions of a small number of protesters (not the defendants in this case) climbing the fence into neighbouring fields and attempting to get behind the police cordon (and presumably in front of the lorries that were following the cordon).
- h. It is relevant to note the degree of both general and specific compliance that each defendant showed to the requests and direction that they were given. A number of the authorities highlight the flexibility and readiness of protesters to cooperate with the authorities as a factor relevant to reasonableness of use.
- i. Barton Moss Road is designated as a public footpath, and it is only in that capacity or with the express or implied permission of the landowner that other members of the public would be entitled to use the road. Whilst I accept that unwarranted interference with private rights is equally incompatible with the use of the footpath as with the general public right to pass and repass, it is a relevant factor in conducting the balancing exercise that the demonstration in reality only interfered with the rights of those against whom the demonstrators were protesting and not with the wider unconnected public (such as might occur with a demonstration on a main road Manchester, for example).

33. I have reviewed the evidence against each defendant separately. I am clear that each defendant was involved in a largely peaceful protest against the exploratory drilling activities by IGas on the Barton Moss Road site. There is no doubt in my mind that each one of them was there, at least in part, to disrupt the lawful activities which IGas was conducting on the site. They may well have had other aims as well, such as protesting about the way in which the Police were

conducting themselves, but I am sure that one of the aims of each defendant of being *on that part* of the road *at that time* was to obstruct and disrupt the free passage of IGas vehicles from the site to the A57.

34. However, I need to balance the reasonableness of that behaviour against the Convention rights of the protesters as set out in Articles 10 and 11.
35. Mr Roscan's behaviour was different from Mr Cohen and Mr Wasilewski. He chose not to comply with the clear directions of the police to start moving down Barton Moss Road with the other demonstrators, and instead knelt down in the middle of the road. I am satisfied, despite his obfuscation whilst giving evidence, that he knew that the lorries were about to start moving out of the drilling site and down Barton Moss Road, and that his intention was to interrupt this movement. He was given clear, polite instructions by PC O'Connell which he ignored, seeking to talk over the officer with a frankly meaningless mantra. He did so in order to disrupt the activities of IGas and to prevent the vehicles leaving the drilling site.
36. Taking all the factors into account and when conducting the balancing exercise that is required, I am satisfied so that I am sure that his actions in kneeling down on the highway and private road in front of vehicles was an unreasonable use of the highway and that at that point Mr Roscan became a trespasser on the land. Furthermore, I am satisfied to the criminal standard that in doing so he intended to disrupt and/or obstruct the lawful activity taking place on that land. In the circumstances, I find him guilty of the offence of aggravated trespass.
37. Mr Cohen and Mr Wasilewski were both arrested whilst undertaking the 'slow walk' from the drilling site to the A57. Mr Wasilewski concedes that part of the purpose of the walk was to disrupt IGas' activities by slowing down the progress of vehicles as a protest against 'fracking'. Mr Cohen was somewhat more obtuse in his evidence, which did him little credit, but I am equally satisfied that he had the same intention in being there at that time and place.
38. Having reviewed the evidence, it is clear that both were initially compliant with the police request to start moving in front of the police line and were making steady progress along Barton Moss Road until (through no fault of theirs) progress stalled.

Without any warning (or indeed clear rationale) the police changed their tactics and sought to significantly increase the pace of the protestors. Neither Mr Cohen nor Mr Wasilewski wished to progress at this faster pace and resisted attempts to make them walk faster. In both cases, but separated by time, they had the misfortune to find themselves in front of PC Genge who interpreted this resistance as deliberate pushing back. It would appear that he gave each of them some warning although I cannot be sure how clear that was in amongst the noise of the demonstration, and he subsequently pulled each defendant through the line to be arrested for the offence of aggravated trespass.

39. At no time did either defendant stop in the road, or do anything particularly different than other demonstrators present that day. The slow walk had been tolerated and managed by the authorities on a number of other occasions both that day and over the preceding weeks and months. It is clear to me that, on this occasion, the pace set by the Level 1 officers was substantially different to that which was normally acceptable to the authorities, and indeed which had been acceptable during the earlier part of the walk. The video shows that the lorries had been making slow but steady progress down Barton Moss Road towards the A57 behind the cordon.
40. In all the surrounding circumstances, I cannot be sure on balance that the actions of either Mr Cohen or Mr Wasilewski that day were unreasonable. They were entitled to demonstrate, were entitled to walk along Barton Moss Road, had been generally compliant with the police, and their actions were specifically directed towards the object of their protest and not the wider public. Their culpability, such as it was, was not to walk at the speed which had been imposed upon protesters by the police without warning or explanation at some point during the walk from the drilling site to the A57.
41. The prosecution has not proved to me, so that I am sure, that in these circumstances the actions of either of these two defendants interfered unreasonably with the lawful use of Barton Moss Road by other members of the public for passage along it when balanced with the undoubted rights which the

protesters had to demonstrate on that path. In the circumstances, Mr Cohen and Mr Wasilewski are entitled to be acquitted of this charge.

N Sanders

District Judge (Magistrates' Court)

13 January 2015