

# Blake v DPP, a summary of criminal case law



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## Introduction

In addition to the general defences seen in criminal law (duress, coercion, diminished responsibility etc) the offence of criminal damage has a number of specific defences which are found in the Criminal Damage Act 1971. In particular section 5 (2) states that a defendant has a lawful excuse, if:

1. He believed that the person whom he believed entitled to consent to the destruction or damage of the property would have consented, had he known of the circumstances; or
1. he acted 'in order to protect' the property of himself or another, or a right or interest in property that
  1. the property, right, or interest was in immediate need of protection, and
  2. the means adopted were reasonable, having regard to all the circumstances.

This defence has been used in a number of cases that will be dealt with below. The leading authority on the defence is *Blake v DPP* [1]. However, one must look at the law prior to this judgement and after it.

### Prior to Blake

In *R v Ashford* [2] it was held not to be a lawful excuse for the defendants to cut the wire at an airforce base in order to protest against the use of nuclear weapons even if they subjectively believed that they had a lawful excuse to act. Michael Jefferson states that the 'defendants argued that the reduction of the risk of the use of nuclear weapons would protect property in England

because the risk of retaliation would be reduced.’[3]It was an already viewed as an objective test that the courts employed.

*R v Hill* [4]involved the defendants cutting a wire fence in order to prevent nuclear war. The Court of Appeal held that the act of cutting was too remote from the prevention of nuclear war and they confirmed that it was an objective test rather than a subjective test. Jefferson notes that the property was not in ‘ immediate need of protection’ and so it did not matter that the defendants believed they were acting to protect ‘ property belonging to another’.

#### Blake v DPP

The defence would apply if the defendant honestly believes X is the owner and consents, even though X is not the owner. However in *Blake v DPP* , the Divisional Court rejected the defendant vicar’s argument that he believed that God owned the property and had consented to the damage. The court acknowledged that his belief was sincere it was however impossible to produce any evidence other than the defendant’s own belief that the command was in fact given. If this defence was indeed accepted then the defence could be raised regarding murder where the accused could simply claim he was carrying out the intentions of God. His marker pen graffiti on the Houses of Parliament in protest against the Gulf war was held to be unlawful.

The defendant also claimed that he had a lawful excuse under section 5 (2) (b) as he damaged the pillar in order to protect property in the Gulf States. The Divisional Court held that, even if the defendant had believed that he

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had a lawful excuse, the court needed to adopt an objective view, if on the facts believed by the defendant, what was done by him protected, or was capable of protecting property.

Richard Card states that the offence was to protect the property in the Gulf States; as such protection was too remote from his conduct[5]. Card states that this objective requirement read into s 5 (2) (b) is not easily reconcilable with the words of the statute, which seem to be a clear expression of a test that is solely subjective.

#### Post Blake

The case of *Chamberlain v Lindon* [6] showed that the defence has some success. This case deals with a 'right of way' as the accused was held to be protecting it when he demolished a wall. This was held to be in an 'immediate need of protection' as it was being obstructed and it would continue until litigation resolved the case.

*R v Kelleher* [7] involved a defendant who knocked the head off a statue of Baroness Thatcher in a protest regarding the policies of democratic governments (UK and USA). The defendant believed that these policies made the world a more dangerous place to live in and would lead to the destruction of the world. The defendant was convicted but then appealed on two grounds. First, he stated that the ruling of the judge that the defence of 'lawful excuse' was not available was wrong. Secondly, the judge wrongly directed the jury to return a verdict of guilty.

Regarding the first issue, the court held that the trial judge was correct in deeming the defence of lawful excuse as unavailable to the defendant.

Regarding the second ground for appeal, William Priestley states that as the jury was invited to retire after the judge's direction, this showed that the jury had in fact acted independently as they then returned and delivered a verdict of guilty.[8]

In *Jones v Gloucestershire Crown Prosecution Service* [9] the defendants relied on section 5 (2) (b) as they damaged property at RAF Fairford in order to protest at illegality of the war in Iraq. These acts were done in order to preserve the homes of their family and friends. It was held that none of the defendants could reasonably believe that their actions of cutting wire around an RAF base would protect their homes.

## Conclusion

As we have seen the defence of s 5 (2) has been used by a number of defendants. Its use has been primarily used by individuals protesting against the policies of the government. With the Human Rights Act 1998 cementing the European Convention of Human Rights into the UK legal system, Article 10 and 12 will be relied on in order to give individuals the right of assembly and free speech. This right however does not extend to criminal acts of damage against property. The objectivity that surrounds s (5) (2) shows that defendants will find it increasingly difficult to rely on this defence however compelling and sincere these subjective thoughts may well be.

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## Footnotes

[1] [1992] 93 Cr App R 169

[2] [1988] Crim LR 682 (CA)

[3] Jefferson, M. Criminal Law 8th Ed. 2007. p. 707

[4] [1989] 89 Cr App R 74

[5] Richard Card. Criminal Law 16th Ed, 2004.

[6] [1998] 2 All ER 538

[7] [2003] EWCA Crim 2846

[8] Priestley, W. Lawful Excuse to the Offence of Criminal Damage. Police Journal vol. 76 2003.

[9] [2005] QB 259