

**IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE**

CASE NO. E13026862

IN THE MATTER OF

CONSTABLE MICALLEF

V.

KYLE MAGEE

DEFENCE SUBMISSIONS & AUTHORITIES

Date of Document:
Prepared and filed by:

06 February 2015
The Accused
Kyle Anthony Magee
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1. Summary of Legal Argument and Relevant Legislation

1. There is no substantive factual disagreement regarding the physical elements of the alleged offending: I freely admit that I posted bills over 4 advertisement panels displayed in public space on Bourke Street, corner of William Street, on the 5th of March 2014.
2. I plead not guilty to the charge of Bill Posting under the common law defence of Sudden or Extraordinary Emergency, a defence formalised in amendments to the Crimes Act 1958, under section 322R.
3. Section 322R of the Crimes Act 1958 provides:
 - (1) A person is not guilty of an offence in respect of conduct that is carried out in circumstances of sudden or extraordinary emergency.
 - (2) This section applies if—
 - (a) the person reasonably believes that—
 - (i) circumstances of sudden or extraordinary emergency exist; and
 - (ii) the conduct is the only reasonable way to deal with the emergency; and
 - (b) the conduct is a reasonable response to the emergency.
 - (3) This section only applies in the case of murder if the person believes that the emergency involves a risk of death or really serious injury.
4. The defence submits that the Accused has a reasonable belief that the threat of climate change constitutes an extraordinary emergency -- an emergency that involves risk of death and really serious injury to millions of people in the near future, if our society continues to ignore such a pressing issue and the actions necessary to mitigate the damage caused.
5. The Accused truly believes his conduct, physically intervening with the for-profit dominance of our public space and media through the for-profit media/advertising system, is the only possibly effective avenue for bringing the issue of climate change to political prominence.
6. It is submitted that the conduct of the Accused is a reasonable response to the emergency of climate change. The conduct is especially reasonable as it causes no damage and only minor inconvenience to a non-personal entity, and is therefore a very pro-social way to make the necessary point, while still making the point in a way dramatic enough to have a reasonable chance of appropriately raising the issue.

Section 322R(2)

7. The substantive section of section 322R of the Crimes Act 1958, as it applies to the defence in this case, is subsection 2, which I will go through sequentially.
8. **Section 322R(2)(a)(i)** provides the requirement that: the person reasonably believes that circumstances of sudden or extraordinary emergency exist.
9. The Accused has a strong and reasonable belief that climate change caused by human activities will bring about apocalyptic outcomes if we continue on our current path of escalating carbon emissions.
10. An overwhelming 97% majority of climate scientists believe climate change is being caused by humans¹.
11. As far back as 2007, while visiting weather stations in Antarctica to learn of the impacts of climate change, UN Chief Ban Ki Moon remarked: "I need a political answer. This is an emergency and for emergency situations we need emergency action"²
12. It is submitted that climate change is an extraordinary emergency for humanity, and that the normally limited legal view of what constitutes an emergency should be expanded so as not to ignore this emergency, much like our media and politics do.
13. **Section 322R(2)(a)(ii)** provides the requirement that: the person reasonably believes the conduct is the only reasonable way to deal with the emergency.
14. The Accused personally and reasonably believes that his conduct is the only reasonable way to deal with the emergency -- this belief arises out of the fact that every other way has been tried by many brilliant people, but those methods are still not effective enough, and the consensus of our scientists and their warnings continue to go unheeded. It is not reasonable to try a method already proven to fall short, it is reasonable to try something new.
15. The list of ways in which one could attempt to deal with this climate emergency is long, but the problem with all these ways for the Accused is that they ignore the central political issue that prevents climate change getting the attention it deserves.
16. To stop talking about myself in the third person, I believe the neo-liberal ideology -- extolling the virtues of "free markets", "free trade", perpetual economic growth and ever-expanding profits -- is fundamentally incompatible with effective solutions to the climate crisis, which will require re-localisation of the economy, trade rules to drive sustainable development, and the

1 *Quantifying the consensus on anthropogenic global warming in the scientific literature*, John Cook et al, 2013 Environmental Research Letters 8 024024.

2 *UN chief says global warming is 'an emergency'*, ABC News, 11 November 2007, accessed at: <http://www.abc.net.au/news/2007-11-11/un-chief-says-global-warming-is-an-emergency/722062>

abandonment of concepts of growth and profits.

17. The same mechanism through which neo-liberal ideology has commandeered global governments -- the for-profit media/advertising system that dominates our mainstream media and thereby controls our political agenda -- is now being used to stymie appropriate political attention and response to climate change.
18. The method of confronting our laughably corrupt "democratic" media systems, despite it's slim prospects of success, remains for me the only reasonable response as it is the only one that goes deep enough to the root of the issue, as well as it being one that has not yet been proven to fail -- I believe if demonstration against for-profit domination of our public space and media was carried out widely and persistently, our media issues could be brought out and resolved, and we would then be in a position to regain control of our political and economic agenda and deal with the emergency at hand.
19. The language of this section makes clear that it is only I, the Accused, who must believe this action is the *only* reasonable response to the emergency, and I will give evidence to support the fact that I do genuinely believe this. This reading of section 322R(2)(a)(ii) is confirmed by the next section, section 322R(2)(b), which speaks of the necessity that the response chosen by the accused be *a* reasonable response, not the *only* reasonable response.
20. **Section 322R(2)(b)** provides the requirement that: the conduct is a reasonable response to the emergency.
21. I regret being unable to organise an expert witness for such a question, which really has more to do with politics, economics and psychology than it does with law.
22. As I couldn't have Clive Hamilton, Professor of Public Ethics at the Centre for Applied Philosophy and Public Ethics and the Vice-Chancellor's Chair in Public Ethics at Charles Sturt University, appear personally, I'll just have to settle for quoting an article he wrote for online newspaper Crikey:

*The climate emergency has turned into a crisis of democracy. The government is meant to protect the interests of the people, but it has instead protected the interests of the big polluters. The Government is in the thrall of a powerful group of energy companies and it is apparent even to the most dim-witted observer that these corporations are, as Thoreau wrote, "more interested in commerce than humanity". The scientists are beginning to understand that human-induced climate change has disturbed a sleeping giant.*³

23. This is a simple statement of the obvious truth that for-profit entities have far too much power in our democracy, and that this hinders our response to the climate emergency -- it should also be clear to "the most dim-witted observer" that having a media system dominated by for-profit entities only deepens this crisis of democracy.

³ *Hamilton: climate emergency or a crisis of democracy?* Crikey, February 04, 2009; Accessed at: <http://www.crikey.com.au/2009/02/04/hamilton-climate-emergency-or-a-crisis-of-democracy/>

24. From these facts it emerges that bringing attention to the deleterious effect of the for-profit media/advertising system, in an attempt to help us deal with the crisis of democracy, is a reasonable response to the emergency of climate change.
25. The choice of direct action to intervene temporarily against a small fraction of for-profit dominance of public space, resulting in the justice system becoming engaged, is also reasonable, as any less interventionist tactics, such as rallies or leaflet distribution, would simply be ignored -- it is only through direct conflict with the current system that the issue is raised appropriately, in a concrete way, in time to prevent a worsened crisis.
26. Considering the societal damage the advertising industry has inflicted during the last decades -- adding to the climate crisis by massively and artificially inflating demand through any psychological abuse available -- the minor inconvenience to their anti-social operation caused by this protest is a very level-headed and reasonable response to the undemocratic domination of public space facilitated by the outdoor advertising industry.