APPEAL COURT, HIGH COURT OF JUSTICIARY

[2021] HCJAC 20
HCA/2020/359/XC
HCA/2020/360XC
HCA/2020/361/XC

Lord Justice General
Lord Woolman
Lord Matthews

OPINION OF THE COURT

delivered by LORD MATTHEWS

in the appeal from the Sheriff Appeal Court

by

THE PROCURATOR FISCAL, GLASGOW

Appellant

against

(1) DANIEL WARD; (2) MARTIN MACAULAY; and (3) RYAN WALKER

Respondents

Appellant: Edwards QC AD; the Crown Agent
Respondents: (1) Mackintosh QC; Paterson Bell (for KM Law, Glasgow)
(2) I Paterson (sol adv); Paterson Bell (for Murphy Robb & Sutherland, Glasgow)
(3) I Paterson (sol adv); Paterson Bell (for Penmans, Glasgow)

4 March 2021

Background

[1] On 19 July 2017 the respondents attended a football match at Celtic Park. It was a high profile fixture between the home team and Linfield FC. There had been crowd trouble at the previous fixture played at Linfield's ground in Belfast. Celtic FC is perceived to have

a predominantly Catholic support. Linfield FC is perceived to have a predominantly Protestant support.

[2] There is an area of Celtic Park where a group of home fans known as 'the Green Brigade' congregate. At the match, the respondents stood there. Each of them wore a white T-shirt printed with an image showing the head of a black-clad male figure against the backdrop of the Irish flag. The figure wore a black beret and sunglasses, while a camouflage scarf covered the mouth. A number of banners were unfurled in the same area of the ground. They showed the same image and had provoked an immediate and hostile reaction from some of the Linfield supporters

[3] The Crown charged the respondents in the following terms:

> "on 19 July 2017 at Celtic Park Football Stadium … you MARTIN MACAULAY, DANIEL WARD AND RYAN WALKER did conduct yourselves in a disorderly manner within said Celtic Park Football Stadium in that you did attend at a regulated football match there whilst wearing a shirt which displayed an image of a figure related to and in support of a proscribed terrorist organisation, namely the Irish Republican Army (IRA) and commit a breach of the peace."

[4] The respondents stood trial at Glasgow Sheriff Court. The sheriff found all three guilty and imposed fines on each of them.

[5] They appealed by Stated Case. Ward was granted leave to appeal in relation to the questions whether the sheriff was entitled to repel the no case to answer submission which had been made on his behalf and, if so, to convict? These are questions 2 and 4 in the Stated Case. Macaulay and Walker were granted leave to appeal in relation to questions 2, 3 and 4, question 3 being a subsidiary matter.

[6] The Sheriff Appeal Court quashed the convictions. It concluded that the Crown had failed to prove by corroborated evidence that the T-shirts had displayed an image of an IRA

figure. Accordingly, the sheriff ought to have upheld the submission. The Crown now appeals against that decision.

Evidence at trial

[7] At the trial the Crown had relied on CCTV footage and still photographs taken at the match. That evidence showed the respondents wearing the t-shirts and the banners being unfurled. The Crown also led evidence from three police constables: Samantha Stirling and Karen Taylor of Police Scotland, and Simon Nixon of the Police Service of Northern Ireland. The officers, each of whom had been on duty at the match, gave the following descriptions of the image on the t-shirts:

PC Stirling	a paramilitary figure, wearing a black beret with sunglasses covering the eyes and a camouflage scarf covering the mouth.
PC Taylor	a caricature of a head with the mouth covered with a camouflage scarf, wearing a black beret and aviator style sunglasses within a circle with the tricolour flag of the Republic of Ireland in the background.
PC Nixon	a head or face wearing a black beret, sunglasses, green scarf and green jacket.

[8] PC Taylor was concerned because, like PC Stirling, she thought that the image had clear paramilitary connotations. PC Nixon went further in identifying its significance. He had viewed numerous IRA parades and funerals in Northern Ireland. Members of that organisation had dressed in that fashion. In his view, the image was clearly intended to depict an IRA "soldier".

Submissions

Crown

[9] The Advocate Depute submitted that the essential facts were that the respondents (a) had attended the match, (b) worn t-shirts depicting paramilitary imagery relating to Irish

republicanism, which (c) alarmed normal citizens. The reference to the IRA in the charge was merely narrative and did not require corroboration: *Campbell* v *Vannet* 1998 SCCR 207. The sheriff had to determine the link to the IRA. He could do so using judicial knowledge in looking at the still and moving images, and was also assisted by the evidence of Constable Nixon. On one view, he was an expert.

Defence

[10] Mr Mackintosh submitted that the charge must specify the conduct said to form the breach of the peace. It had done so. The complaint alleged that the t-shirts displayed an image of a figure related to and in support of a proscribed terrorist organisation, namely the IRA. That being a crucial fact, the Crown required to prove it by means of corroborated evidence.

[11] Only PC Nixon had spoken to the meaning and significance of the image. Neither of the other two officers could corroborate his evidence, because they did not have the necessary expertise or experience. Further, the matter was not within judicial knowledge. A sheriff could not be expected to recognise terrorist iconography in general, or the difference between that of the IRA and other Northern Irish paramilitary organisations in particular. The Sheriff Appeal Court had been correct.

Decision

[12] This is a straightforward case. The respondents attended the match at Celtic Park. They wore t-shirts embossed with a paramilitary image associated with Irish terrorism. Neither point is in dispute. The only issue is whether the Crown required to corroborate the link to the IRA.

[13] We conclude that the reference to the IRA in the charge was narrative. Looking at the images himself, the sheriff was entitled to come to the view that the image depicted a member of a terrorist organisation affiliated to Irish independence. We shall revert to this.

[14] PC Nixon's evidence was available to assist the sheriff in his task but it did not require corroboration: *Davie* v *Edinburgh Corporation* 1953 SC 34. In some cases such guidance will be more necessary than in others. At one end of the range might be the famous image of Che Guevara. At the other end might be someone wearing the garb of an obscure terrorist organisation based in the Far East. Here the image is perfectly clear and the sheriff could assess what was shown for himself. There was in any event ample confirmation or support for PC Nixon's evidence in that of the other officers and the real evidence of the image itself.

[15] Accordingly we are satisfied that the sheriff was correct. The Sheriff Appeal Court, who did not formally answer the appropriate question, opined that the circumstances, if proved, amounted to a breach of the peace and we heard no argument to the contrary. The Crown appeal is allowed in each case and the convictions are restored. We shall answer the questions in the stated cases in the affirmative.

Judicial knowledge

[16] What is the scope of judicial knowledge in Scots law? In *Herkes* v *Dickie* 1958 JC 51, Lord Patrick stated (at 55) that:

> "if any matter requires to be proved in a criminal prosecution, the want of proof of the matter cannot be mended by the private knowledge of the judge".

[17] As a generality, that remains a correct statement of the law of evidence. Nevertheless, as it is neatly put in Wilkinson: *Evidence* (at 128):

> "facts which are common knowledge, either in the sense that every well informed person knows them or that they are generally accepted by informed persons and can

> be ascertained by consulting appropriate works of reference are deemed to be within judicial knowledge".

[18] Davidson: *Evidence* (at para 3.01) cites a passage from Morgan: *Some Problems of Proof* (at 42) which refers to part of the function of judicial knowledge being to prevent a party

> "from perverting the true function of the court by presenting a moot issue or securing a wrong result by disputing what is demonstrably indisputable".

[19] An example of that can be seen in the "unattractive and unrealistic" attempt in *Doyle* v *Ruxton* 1998 SCCR 467 to persuade the court that it had not been proved that McEwans Export, Guinness and Carlsberg Special were of such alcoholic strength that they could only be sold by a person holding the appropriate licence. The court explained (at 470) that it would be "reluctant to hold that information of which the public is … so widely aware is not within judicial knowledge".

[20] What a particular image is intended to represent may or may not be within judicial knowledge. The image in this case, which the appellants were proved to have been displaying, consists of the Irish tricolour upon which is superimposed a representation of a man in military garb, wearing a beret and sunglasses. All well informed persons know that this is a depiction of a member of a proscribed Irish republican terrorist group such as the IRA or similar organisations. There is no need to prove this by "expert" evidence. Any attempt either to confirm or contradict that fact was at best superfluous.

[21] It was not necessary for evidence about the latter to have been led before a Glasgow sheriff. It did not require any degree of expertise to be able to conclude that the figure shown on the T-shirt was a paramilitary figure associated with the Republic of Ireland, given the presence of the tricolour. Even without any formal evidence that the figure represented a member of the IRA, the sheriff would have been entitled to find that the

wearing of the T-shirts was designed to antagonise the Linfield supporters and amounted to a breach of the peace. The reference to the IRA was merely narrative. The sheriff was entitled to look at the image and come to the view that it depicted a member of a terrorist organisation affiliated to Irish independence. The word "proscribed" and the reference to the Irish Republican Army could have been deleted. On that basis alone there was sufficient evidence to allow the sheriff to convict.

[22] In these circumstances it is concerning that a summary trial, which primarily involved readily ascertainable and undisputable facts, took several days to resolve.