



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 16  
HCA/2017/000583/XC

Lady Paton  
Lord Brodie  
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in

APPEAL AGAINST CONVICTION

by

**STEPHEN INGRAM**

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

**Appellant: C Fyffe (sol adv); Bruce Short & Co (Dundee)**  
**Respondent: I McSparran QC (sol adv), AD; Crown Agent**

25 January 2018

[1] The appellant Stephen Ingram was convicted after trial of the two charges on the indictment which he faced. Each offence took place on 29 December 2016 at 109 Kingsway East, Dundee. The victim in each charge was said to be the appellant's then partner Melissa Edgar. Charge 1 on the indictment was a charge of behaving in a threatening or abusive manner, likely to cause a reasonable person to suffer fear or alarm, contrary to

section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010. Charge 2 on the indictment was a charge of assault by striking Ms Edgar on her face. Both offences were said to have been committed whilst on bail.

[2] The appellant has appealed against conviction, on both charges, on grounds which argue that there was insufficient evidence of identification in connection with either charge and that there was insufficient evidence of an assault having occurred in relation to charge 2. He submits that the sheriff erred in repelling the submission of no case to answer made in respect of both charges at the conclusion of the Crown case.

[3] The evidence led before the sheriff is set out in the report which he prepared for this court. Ms Edgar gave evidence and explained that she had been in an "on-off" relationship with the appellant for around 10 years. She denied that she had been assaulted and denied that the appellant had been present in her flat on the night of 28 to 29 December 2016.

[4] Her evidence was that, having consumed a box of wine whilst watching a movie, she became intoxicated and fell asleep. When she awoke in the early hours of the morning she tried to contact the appellant by telephone in a state of some anger as a consequence of learning that he had gone socialising to Newcastle without telling her. She had a smartphone which was paired to an amplified sound bar on her television system. When she was able to make contact with the appellant the sound of him speaking could be heard in the flat as it was broadcast through the television loud speaker. She was hysterically angry, shouting and screaming at him over the phone. She made so much of a disturbance that she woke up her children, who began to shout and cry. On going into the bedroom to calm them she blundered around in the dark and fell over some toys. She suffered a nose bleed but was not exactly sure how this had happened. She was aware of neighbours shouting and banging on her door and she had opened a bedroom window to shout to

another female neighbour, thus leaving some blood on the windowsill from her bleeding nose.

[5] Against this, the Crown relied on the evidence of certain of Ms Edgar's neighbours and of police officers who attended. The witness Maureen Baker lived on the ground floor of the property, immediately below the flat occupied by Ms Edgar. Around 2.00am she was woken by the sound of shouting and heard Ms Edgar and a male arguing. She identified the male voice as that of the appellant, whom she knew. She also heard footfall associated with the disturbance and was satisfied that this was the sound of two separate people. She heard Ms Edgar screaming, including hearing her cry out for help, she also heard her children screaming, she heard thuds and bangs like someone hitting doors or perhaps the floor and sounds she believed to be consistent with furniture being knocked over. Ms Baker was also aware of another of her neighbours, Ryan McCallum, pounding on Ms Edgar's door shouting "he's battering her". Ms Baker began recording the events on her phone and called the police. She then waited in the common stairwell for their arrival. No one passed the witness in the stairwell prior to the arrival of the police. However, she became aware of the appellant outside the flat at his car. He came away from the car, as if intending to go towards the block entrance, but when Ms Baker told him that the police were coming he jumped in the car and drove off. Ms Baker then saw Ms Edgar in the stairwell, her face was red, her nose was bashed up and her eyes were puffy.

[6] The witness Ryan McCallum was woken by the sound of a disturbance. On going out on to the mutual landing he heard Ms Edgar, whom he knew, shouting for help. He called out to her, and she replied "Ryan help me". The flat door was locked and he could not open it but could hear her and her children continuing to scream and shout from inside. He formed the view that she was being attacked by a male inside the flat. He knew that the

appellant had a small red car and on looking out of a window he saw that car in the street beside the flats. He saw it driving off when police sirens were heard. In court this witness listened to the recording which the witness Baker had made of the incident and agreed that a female voice could be heard shouting "Stephen" and that a male voice could also be heard.

[7] Other neighbours who gave evidence also spoke to Ms Edgar's condition when she emerged from her flat. She and her children were taken into a neighbour's property. She was variously described as a being very distressed, sobbing and with blood visible on her nose and mouth, seeming to be in shock and largely unresponsive and having clammed up. One of these witnesses, who lived on the same level as Ms Edgar, confirmed that it would be possible to drop down the outside of the building from one of the windows.

[8] As police officers approached the scene in a marked police vehicle with its blue lights flashing they became aware of a male who was seen to jump into the driver's seat of a red Volkswagen hatchback vehicle and to speed off. One of those officers identified the driver as the appellant.

[9] On attending at Ms Edgar's flat the police officers noted flesh blood spatters. Upturned furniture was seen, including a table having apparently been knocked over in the sitting room with the items which had been on it strewn on the floor. There was a pool of blood in the bathroom and signs of disturbance in the bedrooms with drawers pulled out and a mattress off its base. Blood was noticed on the windowsill of the open window in the bedroom. No one else was in the flat. Ms Edgar was spoken to and was seen to have swelling across the bridge of her nose and to be bleeding from the nostrils. The police officers formed the view that she had been struck in the face.

[10] In careful and thoughtful submissions, Mr Fyffe argued on behalf of the appellant that there was insufficient evidence of an assault. The case could be distinguished from the

cases of *Healy v Vannet* 2000 SCCR 35 and *Dewar v Her Majesty's Advocate* [2017] HCJAC 31 to which the sheriff had referred. In each of those cases there had been a single source of evidence indicative of assault on the complainer and the question was whether that single source could be corroborated.

[11] In the present case he submitted there was no direct evidence of an assault. The evidence was simply consistent with there having been a disturbance which left Ms Edgar distressed and that she had sustained injuries. There was no basis upon which it could be concluded that those injuries had been sustained as a consequence of an attack with evil intent.

[12] In relation to identification, it was submitted that the evidence of identification by voice given by the witness Baker was uncorroborated. The evidence placing the appellant in the vicinity but not within the flat was not capable of providing the necessary support.

[13] In reply, the advocate depute referred to the evidence identified above and submitted that it constituted an overwhelming sufficiency of circumstantial evidence.

[14] In this case the Crown was in the slightly unusual position of not being able to rely on the evidence of the person whom it alleged was the victim in each charge. The evidence given by Ms Edgar exonerated the appellant of the charges. Had it been believed, or had it raised a reasonable doubt about the Crown's case, then the appellant would have been acquitted. As it was, her evidence was plainly rejected. The question for the sheriff at the stage of considering the no case to answer submission, and for us now, is whether there was sufficient in the remaining evidence to entitle the jury to conclude that the charges were established. In considering that question the evidence must be taken at its highest for the Crown and in light of the most favourable inferences available – *Mitchell v Her Majesty's Advocate* 2008 SCCR 469 at paragraph 106. In the absence of reliance on the evidence of a

victim the Crown sought to establish the commission of the crime of assault by relying on circumstantial evidence. Each piece of circumstantial evidence does not need to be incriminating in itself, what matters is the concurrence of testimony. The nature of circumstantial evidence is such that it may be open to more than one interpretation and it is precisely the role of the jury to decide which interpretation to adopt – *Megrahi v Her Majesty's Advocate* 2002 SCCR 509 at paragraphs 32 and 36.

[14] The combined evidence of the witnesses who heard a disturbance and heard Ms Edgar screaming, including screaming for help, the evidence of the state of her property as spoken to by the police, and the evidence of the witnesses who saw the upset and injured condition which she was in, was sufficient in our opinion to entitle the jury to infer that Ms Edgar had been assaulted. The evidence of the witness Ms Baker provided a source of evidence identifying the appellant by voice in Ms Edgar's flat during the course of the disturbance. The real evidence of the recording which she made also established the presence of a male within the property. The appellant was seen outside the property shortly after attempts had been made to provide assistance, and he was observed to leave the scene rapidly.

[15] In our opinion these combined adminicles of evidence entitled the jury to conclude that the assault on Ms Edgar was perpetrated by the appellant and that he was the person responsible for committing charge 1. For these reasons we are satisfied that the sheriff was correct to repel the submission of no case to answer made, and the appeal against conviction on both charges must be refused.