



SHERIFF APPEAL COURT

**[2019] SAC (Crim) 6
SAC/2019/000272/AP**

Sheriff Principal M M Stephen QC
Appeal Sheriff P Braid

STATEMENT OF REASONS

delivered *ex tempore* by SHERIFF PRINCIPAL M M STEPHEN QC

in

APPEAL AGAINST SENTENCE

by

CAMERON MACK

Appellant:

against

PROCURATOR FISCAL, EDINBURGH

Respondent:

Appellant: Collins, Solicitor Advocate; Wilson McLeod solicitors

Respondent: Hughes A.D; Crown Agent

3 July 2019

[1] The appellant, who is aged 22, appeals the sentence of 100 days imprisonment imposed at Edinburgh Sheriff Court on 8 April 2019 following a plea of guilty to a charge of breach of the peace which is in the following terms:-

"On 8 March 2019 at Easter Road Stadium, 12 Albion Place, Edinburgh [he] did conduct himself in a disorderly manner, climb over the advertising boards there, enter the field of play, approach a football player, namely James Tavernier, c/o The Police Service of Scotland, kick a

football away from him, act in an aggressive manner towards him, repeatedly push him on the body and commit a breach of the peace."

The offence took place at Easter Road Stadium, the home ground of Hibs Football Club.

They were playing a home match against Rangers on 8 March. The appellant, who was 21 at the time, attended the match. He is a season ticket holder at Easter Road. The appellant had not previously been in trouble and had no previous convictions.

[2] The appellant appeared in Edinburgh Sheriff Court on 11 March 2019 and pled guilty as libelled. The summary sheriff continued the case for reports and having considered the report and plea in mitigation together with the crown narration determined that a custodial sentence was the only appropriate sentence and imposed a headline sentence of 150 days which he discounted or reduced for the early plea to 100 days. Additionally, the appellant was made subject to a football banning order prohibiting him from entering any premises in the UK for the purpose of attending any regulated football match. There are other associated requirements of the football banning order all continuing for a period of 10 years.

[3] The sheriff has provided a full account of the circumstances of the offence. This was a fairly protracted incident in which the appellant appears to have jogged down some steps, climbed over an advertising board and entered the field of play. The Rangers Captain, James Tavernier was about to collect the ball to take a throw in. The Appellant intervened directly with the Rangers Captain approaching him at relative speed, kicked the ball away as the Captain was about to bend down to pick it up. The two men then appeared to confront each other swinging arms with the appellant behaving in an aggressive manner towards Tavernier. The appellant pushed James Tavernier who also pushed him back. This happened several times. The sheriff describes they were almost grappling before security staff and police intervened and removed the appellant.

[4] The ground was relatively full but not sold out.

[5] In mitigation the sheriff heard that the appellant was a true or genuine first offender who had had no previous involvement with the police or criminal justice system. The appellant's solicitor indicated that two factors may have contributed to his uncharacteristic behaviour on the day in question. Firstly, he had had far too much to drink and could recall little of the event. Secondly, he was under a degree of stress relating to his young daughter. Firstly, it is difficult to understand far less accept why anxiety about his daughter would cause him to behave in this fashion. Secondly, attending a football match having consumed such an excess of alcohol that he could recall very little is not a mitigating factor. Alcohol may have given him the bravado to undertake such a stupid and aggressive enterprise. Today it was submitted that the sheriff ought to have given greater consideration to a sentencing disposal which was an alternative to custody given the terms of s 204 of the 1995 Act. The sheriff had placed too much weight on the need for a deterrent sentence and had insufficient regard to the appellant's personal circumstances and lack of previous offending. He had erred in his approach to section 204. The focus on deterrence of others had diluted the protection afforded to the appellant by the statutory provision.

[6] The appellant's behaviour was grossly disorderly and inflammatory given the location and circumstances. This was a football match between two rival teams in the Scottish premier league. The incident was observed not only by spectators at Easter Road but it was also a live televised game and the incident was significantly publicised and reported on in the national news. His aggressive and violent action towards the Rangers Captain was, in itself, a serious matter but the true gravity of the appellant's behaviour is the potential to inflame and incite other spectators, especially those supporting Rangers, who may have reacted in a disorderly fashion. It is important to emphasise that the offence is

one of breach of the peace and, of course, the essential component of that crime is that there is a significant threat to public safety or of serious disturbance in the community (stadium). Against that background the sheriff was entitled to regard punishment and deterrence as important. The circumstances of the offence justify a custodial disposal. Furthermore, the recent trend of unacceptable spectator behaviour at football matches such as has been publicised and reported on is a concern to the public generally and the football authorities in particular. Of course, disorder at football matches is nothing new but there has been reported a noticeable recent trend of delinquent and violent behaviour. The sheriff was correct to emphasise the need for a deterrent sentence to root out this sort of behaviour and to express society's disapproval. I would add that this sort of behaviour does nothing to improve the game's reputation or support football clubs and the police manage the behaviour of supporters or to encourage families to attend football matches.

[7] The sheriff has given careful consideration to his sentencing decision; he considered the published guidelines from the Scottish Sentencing Council; the Criminal Justice Social Work Report; and the appellant's personal circumstances as a first offender in employment but in the specific circumstances of this offence was entitled to impose a deterrent sentence on the appellant after having regard to the provisions of section 204 of the Criminal Procedure (Scotland) Act 1995. Accordingly, we propose to refuse the appeal.