



SHERIFF APPEAL COURT

**[2020] SAC (Crim) 006
SAC/2020/000208/AP
SAC/2020/000209/AP
SAC/2020/000210/AP**

Sheriff Principal D L Murray
Sheriff Principal C D Turnbull
Appeal Sheriff N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL C D TURNBULL

in

the appeals

by

DANIEL WARD; MARTIN MACAULAY; and RYAN WALKER

Appellants

against

PROCURATOR FISCAL, GLASGOW

Respondent

**Appellant (Ward): Mackintosh QC; Paterson Bell (for KM Law)
Appellant (Macaulay): J. Keenan, solicitor-advocate; Paterson Bell (for Murphy Robb & Sutherland)
Appellant (Walker): J. Keenan, solicitor-advocate; Paterson Bell (for Penmans)
Respondent: Edwards QC AD; Crown Agent**

18 November 2020

[1] Following a trial which took place over a number of days between December 2018 and February 2020 at Glasgow Sheriff Court, the appellants were convicted of the following charge, namely:

"On 19 July 2017 at Celtic Park Football Stadium, Glasgow G40 3RE 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 (*sic*) terrorist organisation namely The Irish Republican Army (IRA) and commit a breach of the peace."

[2] The appeals were argued on the basis that the sheriff had erred by repelling the submissions made under section 160 of the Criminal Procedure (Scotland) Act 1995 – it being contended by the appellants that the Crown had failed to corroborate that the T-shirts in issue displayed an image of a figure related to and in support of a proscribed terrorist organisation; and that, in any event, the appellants' conduct did not amount to a breach of the peace.

[3] The Crown case comprised the evidence of three police officers, Constables Samantha Stirling and Karen Taylor, both officers of Police Scotland, and Constable Simon Nixon, an officer of the Police Service of Northern Ireland, together with a joint minute of admissions (which is not relevant for the purposes of the appeal).

[4] There was corroborated evidence before the sheriff as to each appellant's attendance at the football match in question and that they were each wearing white T-shirts printed with an image showing the head of a black-clad figure. The evidence of the three police officers in relation to the image on the T-shirts in issue can be summarised as follows: Constable Stirling described it as an image of a paramilitary figure, wearing a black beret with sunglasses covering the eyes and with a camouflage scarf covering the mouth. Constable Taylor described it as being 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 tri-colour flag of the Republic of Ireland in the background. She was immediately concerned about these t-shirts because in her view the figure on the t-shirts had clear paramilitary

connotations. Constable Nixon, the officer from Northern Ireland, described the image as depicting a head or face wearing a black beret, sunglasses, green scarf and green jacket. In his view this imagery was clearly intended to depict an Irish Republican Army (“IRA”) soldier in paramilitary garb. The black beret was of the same style and colour as those worn by IRA members. The scarf covering the mouth and nose of the figure and the camouflage/green clothing were all consistent with his knowledge of an IRA member’s uniform. Constable Nixon stated that he had viewed numerous parades, newspaper reports and TV reports showing members of the IRA, consistently dressed as had been depicted on the image in question. He had regularly seen people dressed that way in the streets of Northern Ireland and at parades and funerals of IRA members. Constable Nixon’s evidence was that the image was clearly intended to depict an IRA soldier in uniform.

[5] Each appellant argued that it was necessary for the Crown to adduce corroborated evidence that the T-shirts worn contravened the law in the manner libelled, namely that they displayed an image of a figure “related to and in support of” a proscribed organisation, and that the organisation depicted was the IRA. The Crown argued that it was the breach of the peace that required to be corroborated, not the fact that the T-shirt bore an image of a figure related to and in support of the IRA. That was part of the narrative only.

[6] Since the decision in *Smith v Donnelly* 2002 JC 65, it has been clear beyond doubt that a charge of breach of the peace requires to specify the conduct involved (see paragraph [20] of the opinion of the court). The conduct specified in the present case was “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)” at a regulated football match. As observed by Lord Kirkwood in *Fox v HM Advocate* 1998 JC 94 at 110 H-I:

“It is a cardinal principle of our common law that no one can be found guilty of a crime upon the uncorroborated evidence of a single witness, however credible or reliable that witness may be. There must be evidence from at least two separate sources which is capable of establishing the *facta probanda* beyond reasonable doubt.”

[7] In the present case, there was corroborated evidence before the sheriff to the effect that each appellant was wearing a T-shirt which bore the image that is in issue. However, only the evidence of Constable Nixon was capable of establishing that the T-shirts displayed an image of a figure related to and in support of the IRA. The evidence of Constables Stirling and Taylor did not. Taken at its highest, the evidence was capable only of establishing that the T-shirts worn by the appellants each displayed an image of a paramilitary figure. The Crown did not seek to argue in this case that that was sufficient to support a conviction for breach of the peace.

[8] In the present case, proof of the charge turns upon what the image depicts. The Crown selected the wording of the charge, and accordingly required to prove that the image was of a figure related to and in support of a proscribed terrorist organisation, namely, the IRA. The only evidence supporting the connection with the IRA was given by Constable Nixon. The Crown did not lead evidence to corroborate that point. The nature and specification of the proscribed organisation is an integral part of the charge of breach of the peace, as the Crown chose to libel it. In the absence of proof of that element, there is no other conduct libelled sufficient to support a conviction for breach of the peace.

[9] The appeals will accordingly be allowed and the convictions quashed. We shall give effect to this by answering question 2 in each of the stated cases in the negative.

[10] Whilst it is unnecessary for the court to answer the remaining questions, in the particular circumstances of this case, it is appropriate that we express a view in relation to the second issue that was argued before us, namely, whether or not the charge would have

been capable of amounting to a breach of the peace had all the necessary elements been corroborated. That involves consideration of whether the appellants' conduct was so flagrant that the necessary inference as to the nature of it could be drawn, in the absence of evidence of alarm or annoyance (see *Smith v Donnelly* at paragraph [15], citing *Young v Heatly* 1959 JC 66 at 70).

[11] The wearing of a T-shirt (or top) which *inter alia* refers to a proscribed organisation can amount to a breach of the peace - see *Maguire v Procurator Fiscal, Glasgow* [2013] HCJAC 36. The wearing of a T-shirt which depicts an image in support of such an organisation is no different.

[12] The context, or particular circumstances, in which an accused person behaves is significant (see *Smith v Donnelly* at paragraphs [17] and [18]). The context in this appeal was described in evidence by each of the three police officers: a football match between Celtic, a team based in Glasgow who are perceived to have a predominantly Catholic support, and Linfield, a team based in Belfast who are perceived to have a predominantly Protestant support. The match was the second of a two legged fixture. The first match, which had taken place in Belfast a short time earlier, had involved what was described as significant crowd trouble between the respective groups of supporters both inside and outside the stadium. The potential for further serious disturbance to the community was evident.

[13] In the particular circumstances which pertained in this case, we would have regarded the wearing of a T-shirt which depicts an image in support of a proscribed organisation, such as the IRA, as so flagrant that the necessary inference could be drawn from it, in the absence of evidence of alarm or annoyance. It is difficult but to conclude that the wearing such T-shirts amounted to a deliberately provocative gesture directed towards the Linfield support. The wearing of such T-shirts in near proximity to the opposing

supporters within or around a football stadium is conduct which, if proved, would in our view present as genuinely alarming and disturbing, in context, to any reasonable person.