



SHERIFF APPEAL COURT

**[2016] SAC (Crim) 8
SAC/2016/000032/AP**

Sheriff Principal Scott QC
Sheriff Principal Lewis
Sheriff Arthurson QC

STATEMENT OF REASONS

delivered by SHERIFF ARTHURSON Q.C.

in

Application under section 180(8) of the Criminal Procedure (Scotland) Act 1995

by

STUART BARLOW

Applicant:

against

PROCURATOR FISCAL, PAISLEY

Respondent:

**Applicant: Ogg; Paterson Bell Solicitors
Respondent: Cottam AD; Crown Agent**

8 March 2016

[1] The applicant was convicted after trial on 3 November 2015 at Paisley Sheriff Court of four contraventions of section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010. The first complainer spoke to charges 1 to 3 inclusive and the second complainer to charge 4 alone. The case was held by the learned sheriff to have been proved applying the doctrine in *Moorov*.

[2] At the first sift leave to appeal was granted by the learned sift judge in respect of questions 2 and 3 in the stated case. Leave to appeal in respect of question 1 in the stated case was refused on the basis of prior authoritative determination of the matter in the decision of *Hanif v HMA* 2009 JC 191. An application under s.180(8) of the 1995 Act directed towards that refusal has now been advanced and argued this morning by Ms Ogg under reference to the opinion of counsel. Having considered the analysis on this point given by the learned sheriff at paragraphs 23 and 24 of the stated case, in respect of both complainers regarding the use of separate emulator boards and in respect of the first complainer by a Viper procedure in the light of the decision of the Appeal Court in *Hanif, supra*, we are not satisfied that we should depart from the determination on question 1 made by the learned first sift judge, the point appearing to us to be of no merit, as so analysed. We are fortified in that view under reference to the opinion of the Appeal Court at para 8 in *Birnie v HMA* 2015 JC 314, referred to by the advocate depute for the Crown in his submission to us this morning.

[3] This section 180(8) application is accordingly refused.