SHERIFF APPEAL COURT

[2025] SAC (Crim) 7
SAC/2025/000124/AP

Sheriff Principal A Y Anwar KC
Sheriff Principal C Dowdalls KC
Appeal Sheriff D A C Young KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in

Appeal by Stated Case against Conviction

by

ELLEN DONNELLY

Appellant

against

PROCURATOR FISCAL, PAISLEY

Respondent

Appellant: A. Ogg (sol adv); Tod and Mitchell Solicitors, Paisley
Respondent: D. Dickson KC (sol adv), AD; Crown Agent

30 September 2025

Introduction

[1] The appellant was charged on summary complaint with a contravention of section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 aggravated in terms of section 1 of the Hate Crime and Public Order (Scotland) Act 2021. The charge alleged that

she shouted, swore and acted in an aggressive and disorderly manner and made a homophobic remark to the complainer.

[2] Following trial, the appellant was convicted. She was sentenced to a fine of £100 and a victim surcharge of £10. She appeals by way of stated case. She submits that, in the course of delivering her verdict, the justice of the peace stated that she found the two witnesses led by the Crown to be credible and reliable; however, the justice failed to set out in her verdict why she did not accept the evidence of the appellant and her witness, SG. It was inappropriate to leave such a matter simply to inference and, accordingly, there had been a miscarriage of justice.

[3] The hearing on adjustments to the stated case took place before the justice on 4 April 2025. The Crown proposed an adjustment to the stated case in the following terms:

> "2. In the justice's note section on verdict at page 6, the JP is respectfully invited to expand upon why she did not accept the evidence of the appellant, why she did not accept the evidence of the defence witness SG and expand upon her reasons for accepting the Crown witness' evidence."

[4] The appellant objected to the proposed adjustment on the basis that it was an attempt by the Crown to re-write the stated case. The justice agreed; she had already explained her view in the stated case. The proposed adjustment was refused.

[5] The justice poses two questions for this court in her stated case:

i. On the facts stated, was I entitled to convict the appellant?; and

ii. Did I err in delivering my verdict?

The trial

[6] The Crown led evidence from the complainer and her friend, LM. The complainer gave evidence that the appellant told her to: "fuck off ya fat lesbian". That evidence was

corroborated by LM. Both witnesses stated that the appellant's witness, SG, was not present to hear the exchange between the appellant and the complainer.

[7] Upon the closing of the Crown's case, the appellant made a no case to answer submission. That was rejected. In her defence, the appellant gave evidence and led evidence from SG. The appellant accepted that she spoke to the complainer. Her evidence was that LM and SG were present at the time. She denied making the slur. SG's evidence was to the same effect; he had been present and he did not hear the appellant make the slur alleged.

[8] Having considered the evidence led by both the Crown and the appellant, as well as the closing submissions, the justice found the complainer and LM were both credible and reliable. She did not address the appellant or SG's evidence nor explain her assessment of either. She convicted the appellant.

Submissions for the appellant

[9] The solicitor advocate for the appellant submitted that the first question in the stated case be answered in the negative and the second in the affirmative.

[10] Any well-informed and impartial observer of the trial would have been confused at the verdict given by the justice. She had failed to provide any explanation as to why she did not accept the evidence given by the appellant or SG, nor why she found neither of them credible nor reliable. Her failure to do so amounted to a clear error (*Jordan* v *Allan* 1989 SCCR 202; *Roberton* v *McGlennan* 1994 SCCR 394; and *McKim* v *Richardson* [2010] HCJAC 122; 2011 SCCR 57). The relevant test was whether a well-informed and impartial observer would have understood the reasons for the justice's verdict: *McKim* at para [5]. That test was not met.

[11] The justice had an obligation not only to deliver her verdict, but also her reasoning which supported it. The suggestion by the advocate depute that the verdict alone was sufficient without reasoning being provided was wrong. Providing reasons for a decision is a matter of fairness and a necessary requirement for the appellant to receive a fair trial. Moreover, if a sheriff did not require to provide reasoning that would preclude any appeal alleging an error in reasoning of the verdict, even in cases where such an appeal was merited.

[12] The discussion in *Judge* v *United Kingdom* 2011 SCCR 241 provided little assistance in this appeal, as it had considered solemn, not summary, procedure.

Submissions for the Crown

[13] The advocate depute invited the court to answer the first question posed in the stated case in the affirmative and the second question in the negative. The issue for determination was whether the justice was satisfied, beyond reasonable doubt, upon the evidence, that the appellant had committed the offence libelled.

[14] The issues in dispute and for determination by the justice were: (i) whether the discrepancies in the evidence of the complainer and LM were such that they created a reasonable doubt; and (ii) whether the justice found the appellant and SG credible and reliable such as to create a reasonable doubt, if the justice found the witnesses led on behalf of the Crown credible and reliable.

[15] The advocate depute submitted that there was no requirement, in Scots law, for a trier of fact to explain the basis of their verdict in summary criminal proceedings. The only requirement, as a matter of law, was for the trier to fact to give their verdict, whether that be guilty, not guilty or not proven. While an explanation of their verdict was preferable, a

failure to provide an explanation in the course of issuing their verdict did not automatically lead to a miscarriage of justice having taken place.

[16] In this appeal, the justice had gone further than simply making a finding of guilt; she explained the reasoning for her verdict. The justice determined that the variances in the Crown evidence were only slight and that the Crown witnesses were credible and reliable. She believed the complainer and LM; disbelieved the appellant and SG; and had no doubt the appellant committed the offence. Where there was a conflict in the account between the witnesses led by both sides, namely that SG was present when the homophobic remark was made, the justice was clear that did not believe the evidence of the appellant or SG. The role of any trier of fact is to pick and choose what evidence they rely on and therefore the process by which the justice came to her decision was sufficient. She did not require to go any further in her reasoning and certainly went further than the circumstances in *Petrovich* v *Jessop* 1990 SCCR 1.

[17] The justice's verdict was sufficient. In *Judge* v *United Kingdom* 2011 SCCR 241 the European Court of Human Rights held that there were sufficient safeguards available in the Scottish system framework which enable an accused to understand the reasons for their conviction. Whilst the advocate depute accepted that the decision in *Judge* related to jury verdicts, he submitted that many of the safeguards in solemn cases also applied to summary cases.

Decision

[18] The justice was presented with a straightforward factual dispute involving two contradictory versions of events. The complainer and the Crown witness, LM, both spoke to hearing the appellant make a homophobic remark directed at the complainer. They both

denied that SG had been present. The appellant denied making the remark and stated that SG had been present. SG gave evidence that he had been present. He stated that the appellant did not make the remark.

[19] At the conclusion of the evidence, when delivering her verdict, the justice stated that she had considered all of the evidence, did not accept that there were material discrepancies between the evidence of the Crown witnesses and that she found the Crown witnesses to be reliable and credible. She did not expressly refer to or explain her assessment of the appellant's evidence or that of the appellant's witness, SG.

[20] In the stated case, the justice elaborated upon the reasons for her decision. She stated:

> "Nothing raised on behalf of the appellant raised any doubt in my mind that the appellant committed the offence libelled. I did not believe the evidence of the appellant or the defence witness [SG]. Both Crown witnesses were asked if SG was there and both said he wasn't. I do not believe that [SG] was present."

[21] The issue comes to this: has there been a miscarriage of justice as a result of a lack of reasons for the verdict following trial and if so, can this court have regard to the subsequent explanation provided in the stated case to satisfy itself that the findings in fact were made on the whole evidence?

[22] On behalf of the Crown, it was submitted that the justice was only obliged to return a verdict. We do not agree. We accept that there is no express statutory requirement to provide reasons for a verdict following a summary trial. However, the giving of reasons is a function of due process. Article 6 of the European Convention on Human Rights obliges courts to give reasons for their judgments. The giving of reasons is generally implicit in the concept of a fair trial. Reasons inform the parties of the basis of the decision, enable them to exercise any right of appeal and enable the public to understand the rationale for judicial

decisions (Reed and Murdoch, *Human Rights Law in Scotland*, 4th edition (2017) at paragraph 612). The giving of reasons is the clearest demonstration that justice has been done and that a verdict is not the product of an arbitrary, biased or selective assessment of the evidence.

[23] We are not persuaded that the dicta in *Judge* v *United Kingdom* can be applied to summary criminal proceedings. In *Judge*, the European Court of Human Rights was concerned with whether an absence of reasons for a verdict by a jury was incompatible with a right to a fair trial. The court held that it was not. It considered that there were sufficient safeguards in solemn proceedings for an accused to understand why he has been convicted. Those safeguards included the addresses by the prosecution and the defence, the presiding judge's charge and the demarcation of the roles of the judge and jury, the former being tasked with ensuring that the proceedings are conducted fairly and to explain the law and the latter being "the masters of the facts". While in summary criminal proceedings, the prosecution and the defence make brief addresses to the presiding sheriff or justice, there is no charge and no general directions which might inform those present, including the accused, of the matters which require to be established to convict, the applicable legal principles or the correct approach to the evidence. The sheriff or justice is both the master of the law and the facts.

[24] What then is required of a sheriff or justice in summary criminal proceedings when delivering a verdict? In our judgment, the reasons given should allow a well-informed and impartial observer of the proceedings to understand why the accused has been convicted. That was the test applied by the court in *McKim* v *Richardson*.

[25] Self-evidently, the nature and extent of the reasons for verdict will depend upon the nature of the evidence and the nature of the charges before the court. In a case such as the

present which turns entirely on witness testimony and the matter to be decided is a simple binary question (could the justice be satisfied beyond reasonable doubt that the appellant made the homophobic remark) brief reasons for preferring one account over another will normally suffice. It is likely to be enough to explain which witness was believed to be telling the truth and why the evidence of other witnesses was not considered credible or reliable. A reasoned judgment does not have to deal with every matter raised. However, it is important that the sheriff or justice demonstrates that they have weighed all of the evidence to enable the well-informed and impartial observer to understand that the verdict is not the product of an arbitrary, biased or selective assessment of the evidence.

[26] In *Jordan* v *Allan* the justice failed to make reference to an explanation provided by the accused of his failure to stop at a red traffic light. He did not explain whether he believed the accused's account or took it into account. On appeal the High Court held that the justice's findings in fact could not be treated as having been made upon the whole evidence and the conviction was quashed. Similarly, in *Petrovich* v *Jessop*, a failure to explain why an inference was drawn that the appellant had the necessary *mens rea* to constitute the offence of shoplifting without an assessment of the appellant's evidence which provided an alternative explanation as to why he had left a shop without paying for goods, led to his conviction being quashed. In *Roberton* v *McGlennan,* the justices explained their assessment on the credibility of the appellant's witness's evidence but failed to explain their assessment of the appellant's evidence. The Crown sought to persuade the court on appeal that having found the Crown witnesses to be credible, it was a matter of inference that the justices had rejected the appellant's evidence. The High Court did not agree that such an inference could be drawn and the conviction was quashed.

[27] In the present case, while the justice referred to all of the evidence when delivering her verdict, she only explained her assessment of the evidence of the Crown witnesses. A well-informed and impartial observer would have been confused as to why the evidence of the appellant and her witness, SG, was rejected. Such an observer might have been left with the impression that the justice had erroneously attached greater weight to the evidence of the Crown witnesses, starting from the position that if she were persuaded they were telling the truth, she did not require to assess the evidence of the defence witnesses. While the starkly contradictory evidence as to what was said and who was present might have led to an inference that if one account has been preferred the other has been rejected, it does not assist the well-informed and impartial observer to understand why that it is so. In any event, such an inference cannot be drawn (*Roberton* v *McGlennan*).

[28] The justice provided a brief assessment of the appellant's evidence and that of SG in her stated case. Inevitably, a stated case is a fuller explanation of the facts of the case and the grounds for the decision. However, the assessment of the appellant's evidence and that of SG cannot, as Lord Obsorne explained in *McKim*, "affect the impression of the trial which was given at the time and would have been observed by an impartial and well-informed observer" (*McKim* [5]).

[29] For these reasons, we shall quash the appellant's conviction. A miscarriage of justice has occurred; justice has not been seen to be done. The first question does not adequately focus the issue before us and we shall decline to answer that. We shall answer the second question posed in the stated case in the affirmative.