SHERIFF APPEAL COURT

[2025] SAC (Crim) 3
SAC/2024/443/AP

Sheriff Principal G A Wade KC
Appeal Sheriff D O'Carroll
Appeal Sheriff C M Shead

OPINION OF SHERIFF PRINCIPAL G A WADE KC

in

Appeal by Stated Case against Conviction

by

SAMUEL STEWART

Appellant

against

PROCURATOR FISCAL, LANARK

Respondent

Appellant: Party
Respondent: Harper, KC, AD; Crown Agent

29 April 2025

Introduction

[1] On 14 October 2024, at Lanark Sheriff Court, the appellant was convicted of directing a laser beam towards a tractor, which was moving, and that, in so doing, the laser beam dazzled and distracted his neighbour who was driving the tractor, all contrary to section 1(1) of the Laser Misuse (Vehicles) Act 2018.

[2] The two questions posed in the stated case are

> "1. Upon the evidence narrated was I correct to repel the appellant's motion of no case to answer?;
>
> 2. On the facts stated was I correct to convict the appellant?".

[3] The appellant submits that the sheriff erred in dismissing his submission of no case to answer at the conclusion of the Crown's case for two reasons: (i) the Crown failed to prove the essential facts of the offence beyond reasonable doubt; and (ii) the sheriff erred in his interpretation of the definition of "laser beam" at section 3 of the 2018 Act. Separately, the appellant submits that the sheriff was not entitled to convict him.

Legislation

[4] The provisions of the 2018 Act relevant to this appeal are:

> **"1 Offence of shining or directing a laser beam towards a vehicle**
> (1) A person commits an offence if—
> (a) the person shines or directs a laser beam towards a vehicle which is moving or ready to move, and
> (b) the laser beam dazzles or distracts, or is likely to dazzle or distract, a person with control of the vehicle."
>
> **3 Interpretation**
> In this Act—
> …
> 'laser beam' means a beam of coherent light produced by a device of any kind;
> "vehicle" means any vehicle used for travel by land, water or air;"

There does not appear to have been any substantive judicial discussion of these provisions since the legislation came into force.

The trial

Evidence

[5] The Crown led three witnesses: (i) Cameron Baillie; (ii) Andrew Baillie; and (iii) PC McAvoy. Cameron Baillie gave evidence that the appellant shone 'laser pens' at him while he was working between 1 October 2023 and 26 December 2023. The first time it happened was while he was out on his usual morning routine in the tractor. He noticed a red pen light appeared on him. The red dot followed him. He could see that the laser beam projecting the red light was coming from the appellant's property. He saw the appellant in the window standing at the point from which the red light was shining. He identified the appellant as the perpetrator in court.

[6] The shining of a red laser beam happened on a few occasions. That led to both Cameron and Andrew Baillie recording the shining of the red laser beam. Five separate clips of video evidence were spoken to by Cameron Baillie, one of which showed a red laser beam flashing in front of the screen of a moving vehicle.

[7] Andrew Baillie confirmed his son's evidence, namely that the appellant shone a laser beam from his upstairs window. He identified one video clip taken by his son. Prior to taking the video clip, Cameron had been driving a forklift truck; he had to stop as a result of a laser beam being shone at him. Cameron called Andrew to come over to see what had happened. Andrew saw the appellant shining a beam of light. Cameron took the video clip of the incident.

[8] Both witnesses are noted by the sheriff as having described the beam as a "laser beam". On specific questioning as to whether the beam could have been from a pair of night vision binoculars Cameron Baillie said it could have been but that it looked like a laser beam and he said he was sure that he could see the appellant shining the laser pen.

Andrew Baillie was also cross examined regarding the source of the light and thought it could have come from the scope of a firearm but they were consistent in their description of the nature of the beam which they had seen

[9] The Crown's final witness was PC McAvoy. An allegation had been made that the appellant had shone a laser beam at Cameron Baillie in the tractor. A search warrant was sought and obtained for the appellant's cottage. This was executed on 7 November 2023. The appellant and his wife were there at the time. She read the warrant to the appellant and cautioned him at common law then carried out the search of the property. During the search the appellant, aware of the allegation, said that the device he had used was a pair of night time vision binoculars. These were found, seized as a production and lodged with the Crown.

[10] During the trial, the sheriff asked the procurator fiscal depute why the binoculars had not been lodged as a production. The procurator fiscal depute did not know. The matter was not explored further. The Crown closed its case.

No case to answer submission

[11] Upon conclusion of the Crown's case, the appellant submitted that there was no case to answer, in terms of section 160 of the Criminal Procedure (Scotland) Act 1995. He submitted, without reference to authority or statute, that there was no evidence of a laser beam having been used by him. Instead, the evidence was simply that a light had been shone on the body of Cameron Baillie. There was insufficient evidence to support the charge.

[12] The procurator fiscal depute submitted that both Cameron and Andrew Baillie had spoken to a laser beam being shone towards vehicles they were in. The video clips lodged and spoken to by the witnesses showed a laser beam being shone towards a tractor.

[13] The sheriff held there was a sufficiency of evidence. Two witnesses, supported by five clips of video evidence showing the laser beam being used, spoke to a red laser beam being pointed at Cameron Baillie when he was driving a tractor. Both Cameron and Andrew Baillie spoke to this happening on a number of occasions when Cameron Baillie had to stop driving because of the distracting and off-putting nature of the laser beam.

[14] No "best evidence" objection was raised by the appellant at the no case to answer submission with respect to the binoculars not having been lodged. After considering the terms of the note of appeal, which did allege such an error, the sheriff considered that the failure of the Crown in lodging the binoculars was immaterial, standing the definition of "laser beam" in section 3 of the 2018 Act. The source of the beam of coherent light did not matter and did not require to be proved.

[15] The Crown only had to lead sufficient evidence to show and corroborate that: (i) a laser beam (being a beam of coherent light) had been shone towards a vehicle; (ii) that it distracted or dazzled the driver of the vehicle; and (iii) the identity of the person that shone the laser beam. Having done so, the sheriff refused the no case to answer submission.

Conviction

[16] The appellant chose not to lead any evidence.

[17] The sheriff considered the evidence and held that the appellant had shone or directed a laser beam towards the tractor driven by Cameron Baillie on a number of occasions while he was driving a tractor (finding in fact [2]); and that the laser beam

distracted Cameron Baillie on a number of occasions whilst he had control of the tractor (finding in fact [7]). He therefore convicted the appellant of a breach of section 1(1) of the 2018 Act. The sheriff deferred sentence on the appellant to be of good behaviour for a period of 12 months.

Submissions for the appellant

[18] The sheriff erred in refusing the appellant's no case to answer submission. It was conceded that section 1(1) of the 2018 Act created a strict liability offence; however, the Crown still had to prove the essential elements of the offence.

[19] It was essential for the Crown to prove that a laser beam was directed against Cameron Baillie by the appellant beyond reasonable doubt; it had failed to do so. The Crown did not lodge the binoculars as a production. The sheriff inferred, based on PC McAvoy's evidence, that the binoculars were the device that was used. However in failing to lodge the binoculars the Crown did not prove that the binoculars emitted a laser beam of coherent light, as opposed to an infrared light emitting diode which does not emit coherent light. In order to demonstrate that the binoculars emitted a beam of coherent light, rather than incoherent light, the binoculars and their technical specification should have been lodged by the Crown and spoken to in evidence. Reliance was placed by the appellant to this end upon: *McKellar* v *Normand* 1992 SCCR 393; *Smith* v *Procurator Fiscal, Glasgow* [2017] SAC (Crim) 16; and *Melville* v *Procurator Fiscal, Dundee* [2018] SAC (Crim) 14.

[20] Moreover, the Crown had to prove what device had been used to project the laser beam. There was no direct evidence from any of the Crown's witnesses as to the device used to emit the laser beam. All the sheriff had was the inference drawn from PC McAvoy's evidence. Neither of the Baillies spoke to the appellant using binoculars.

[21] Separately, the sheriff erred in his interpretation of the definition of "laser beam" at section 3 of the 2018 Act. The sheriff had adopted a literal interpretation of the phrase "coherent" in the definition; however, that interpretation was contrary to the intention of Parliament. It was submitted that the reference to a "device of any kind" within the definition of "laser beam" at section 3 was not merely a reference to any device that could emit a beam of light. It required to be a laser device, such as a laser pointer or pen.

[22] The questions posed by the sheriff ought to be answered in the negative and the conviction quashed.

Submissions for the Crown

[23] The question for the sheriff was whether the appellant shone or directed a laser beam (as defined as a beam of coherent light) towards the Cameron Baillie while he was in control of a tractor causing dazzling or distraction. The sheriff concluded that the appellant did.

[24] There was ample evidence to prove the charge without the presence of the binoculars. Standing the terms of section 1 and section 3 of the 2018 Act, a beam of coherent light may be produced by a device of any kind. The binoculars did not form part of the libel. The Crown did not require to prove that the light came from the binoculars, but from a device of any kind. The Crown did not require to prove the exact nature of the implement which gave off the laser beam. If the absence of the item does not prejudice an accused, such as the appellant, and the presence of the items is not necessary for the proof of the Crown case, production of the item by the Crown is not necessary: *Maciver* v *Mackenzie* 1942 JC 51; and *Friel* v *Leonard* 1997 SLT 1206.

[25] Sufficient evidence had been led to corroborate the offence and the identity of the appellant. On the basis of the sheriff's findings in fact, he was entitled to convict the appellant. The questions in the stated case should both be answered in the affirmative.

Further submissions.

[26] While the appeal was at avizandum, the Court invited the parties to make submissions regarding the relevance of the decisions of the High Court in *PF* v *Aziz* [2022] HCJAC 46 and *Petrovich* v *Jessop* 1990 SCCR 1 to the matters raised in this case. The Court is grateful to the parties for those submissions which have been fully taken into account.

Decision

[27] I am grateful to Appeal Sheriff O'Carroll who has made a significant contribution to this opinion, with which he concurs.

Best evidence and the binoculars.

[28] The sheriff begins by observing that the application for the stated case contests his interpretation of the statutory definition of a "laser beam" which is defined in section 3 of the 2018 Act as "a beam of coherent light produced by a device of any kind." While he acknowledges that this raises a point of law, he makes clear that the vast majority of what is now advanced by the appellant was not argued before him.

[29] Furthermore the basis upon which leave to appeal was granted (absence of the binoculars as best evidence) was never raised as an issue by the appellant at first instance, the only query as to the whereabouts of the binoculars having been raised by the sheriff himself.

[30] The defence submission of no case to answer proceeded on the basis that there was no evidence of a laser beam having been used at all and that the most that the Crown could

establish was that a light had been shone on the body of Cameron Baillie. There was no reference to authority nor to the statutory definition of a "laser beam".

[31] The first mention by the appellant of any issue regarding the availability of the binoculars as best evidence arose at the adjustment stage when the appellant proposed an additional finding in fact in the following terms.

> "10] That the night vision binoculars were not presented in Court as a production, despite them being the best evidence."

[32] This was opposed by the Crown but allowed in part up to and including the word "production". At the hearing on adjustments the sheriff records that the point was made that had the appellant sought to rely on the binoculars he himself could have lodged them and if so advised obtained a report as to their specification and capability given that the approach of the Crown did not require reliance upon them. Therefore the main reason why leave to appeal to this court was granted (namely the absence of best evidence) was never advanced at trial and forms no part of the discussion in the body of the stated case. Nor is there a specific question focussed on ground.

[33] However having considered whether there is any merit in this argument I, like the sheriff, approach the issue of the night binoculars and whether they constitute best evidence as irrelevant. The binoculars are only referred to in findings in fact [8] and [9] where it is recorded that on 7 November 2023 the police seized a pair of night vision binoculars from the appellant who was aware of the allegation against him and who then volunteered that the implement he had been using was a pair of night vision binoculars. It is then recorded as a matter of fact that the night vision binoculars were not lodged in court as a production.

[34] There is no finding in fact connecting the night vision binoculars with the emitting of the laser beam or accepting that they were even capable of emitting a laser beam. The sheriff

does not find in fact that the binoculars were used in the commission of the offence by the appellant.

[35] At paragraph [21] of the stated case the sheriff states:

> "The appellant admitted using night time vision binoculars which I inferred in the circumstances produced a beam of light. If I was wrong in that inference there was still plenty of evidence against the appellant even without the reference to, or presence of them in court. The appellant is proceeding on the basis that the Crown required to prove the nature of the implement which he had been using which is incorrect in my view."

This passage cannot be read so as to infer a finding in fact that the device responsible for producing the laser beam to which the witnesses spoke was indeed the pair of night vision binoculars. Their capability was never explored. That was not required.

[36] The conviction was based on the sheriff's finding in fact and law that on a number of occasions between 1 October and 7 November 2023 the appellant shone or directed a laser beam, a beam of coherent light, towards a tractor which was moving and had to be stopped; said tractor being driven by Christopher (sic) Baillie; and the laser beam distracted him while he had control of the vehicle.

[37] The best evidence of the red beam of coherent light came from the witnesses who saw it, namely Cameron and Andrew Baillie and of course the video evidence which was shown to the sheriff and from which he was entitled to draw his own conclusions: *Gubinas and Another* v *HM Advocate* 2017 HCJAC 59. From these sources the sheriff was entitled to and did conclude that a laser beam had been shone in contravention of the statutory provision.

[38] Far from accepting that the binoculars were the source of the beam of light the sheriff made clear in rejecting a proposed adjustment to that effect that as this was only one of a number of potential competing sources of the beam he did not have an evidential basis upon

which to make such a finding. So far as the question of sufficiency is concerned, the binoculars are, as the sheriff describes them, a "red herring in this case". Accordingly in so far as this appeal is founded on the absence of the availability of the best evidence it must fail.

Meaning of laser beam.

[39] We turn then to the question of the sheriff's interpretation of a "laser beam" in section 3 of the 2018 Act as meaning "a beam of coherent light produced by a device of any kind". The court had the benefit of considering the excerpts from Hansard which the appellant has comprehensively produced in support of his submission that the definition requires the Crown to prove the technical specification of the device and therefore the nature of the beam of light being emitted before a conviction can ensue. In other words the appellant seeks to ascribe to the words of the statute a particular scientific definition rather than applying their ordinary English meaning.

[40] This is not a case to which the conditions of *Pepper* v *Hart* [1993] AC 593 apply so as to admit consideration of extraneous sources of information as an aid to interpretation. The language used is neither ambiguous nor obscure and the mischief which the legislation sought to combat, namely the shining of a laser beam in such a manner as to cause distraction to moving vehicles, is clearly addressed. No absurdity arises.

[41] The nature of the type of light beam struck at is defined in section 3 as being "a beam of coherent light produced by a device of any kind". The Oxford Dictionary of English ("OED") definition of the common word "beam" relevant to this context is "a ray or bundle of parallel rays, of light emitted from the sun or other luminous body; out-streaming radiance". As regards the adjective "coherent", the general meaning given by the OED is

"that [which] sticks or clings firmly together". A more specialised sense of "coherent" in the context of a laser light source is also given: "the action of a laser is to emit light of a very narrow bandwidth and considerable intensity-what is called coherent light". "Bandwidth" in this context refers to the width of a band of light measured from side to side. Accordingly, a light source that is diffuse, unfocused, or scattered does not produce a coherent beam of light. So for example, car headlights or an ordinary unspecialised battery operated torch are devices that produce light, perhaps very bright light, but not coherently. By contrast, for example, some light producing devices used for lecturing, for dog training, used as night sights or attached to a rifle for sighting purposes etc. may all produce coherent beams of light, being narrow and of considerable intensity. That is their purpose and function but like any tool they can be misused, hence this Act. The Act thus excludes ordinary forms of light sources from its ambit.

[42] The appellant urges us to approach the matter having regard to an alternative definition of what constitutes a beam of coherent light under reference to what he describes as its "unique physical definition". It is important that the statute does not define laser by reference to a technical standard or scientific definition as it could have done. Instead "laser" is given an autonomous definition, not requiring proof as to whether a particular beam of light was one in which the photons comprising the light were, or were not in constant phase (one alternative scientific definition of coherence). That would be impossible to prove without expert evidence as to the manner in which the beam was produced. The statutory definition makes clear that the device producing the beam of light can be of any kind. It matters not whether a physicist would describe a given device emitting the light as a laser so long as the quality of light emitted meets the statutory definition. That approach is consistent with the mischief with which the Act is concerned. Since there is no ambiguity in

the legislation and no absurdity is produced by application of normal principles of statutory construction, *Pepper* (supra) has no application. Therefore, the appellant's submissions in relation to the sheriff's approach to statutory interpretation must fail.

[43] On the basis of findings in fact [2] to 7] there was sufficient evidence before the sheriff to allow him to repel the submission of no case to answer, that the beams of light spoken to by the witnesses and observed by the sheriff himself in the video clips satisfied the statutory definition, and having accepted the Crown witnesses as credible and reliable he was thereafter entitled to convict the appellant of the offence libelled.

[44] Both questions posed in the stated case should therefore be answered in the affirmative and, in doing so, the appeal against conviction falls to be refused.

Dissenting opinion.

[45] I note that the majority opinion is not shared in all respects by Appeal Sheriff Shead. Having considered the terms his dissenting opinion the following comments are offered. That opinion agrees it is unnecessary on the facts of this case for any reference to be made to Parliamentary material, relying on dicta in *Pepper* v *Hart*. It agrees that the use of the OED definition of "coherent" is correctly albeit he prefers the more scientific formulation. It agrees it was not necessary for the Crown to produce the binoculars and that the best evidence rule is not in play. It agrees that there was a sufficiency of evidence. It agrees that the first question in the stated case should be answered in the affirmative. It agrees that the decision of the Court in *PF* v *Aziz* [2022] HCJAC 46 has no application to this case.

[46] However, the Appeal Sheriff nonetheless would have answered the second question in the negative and that for the reasons he gives. At this point a divergence of views arises. While it may be true that the second question in the stated case could have been more

clearly focused on the issue that the appellant wished to raise in this appeal, being whether the sheriff was entitled to find on the evidence led that the light sources referred to in evidence fell within the statutory definition of "laser beam", that did not lead to any prejudice to the appellant since exactly that point was aired fully in the grounds of appeal, the extensive written submissions made by the appellant prior to the appeal hearing, at the hearing and indeed, in the opinions of the court. That is despite the fact that, as the sheriff records, the vast majority of what is now argued was not advanced before him. This is not a case where in the absence of a tightly focused question in the stated case, the court has refused to hear argument. Similarly, the sheriff's refusal to allow the sixth proposed adjustment which would have added a third question of law concerned with the statutory definition of a laser beam has not prejudiced the appellant since this court allowed and considered all questions relating to that statutory definition.

[47] Turning to the adequacy of the sheriff's reasoning it is my view that the reasons for conviction given by the sheriff were "stateable and defensible": *Petrovich* v *Jessop* 1990 SCCR 1. Having narrated the evidence of the witnesses in detail he explains at paragraph [21] why he accepted the Crown witnesses as credible and reliable in association with the video footage which he himself was entitled to assess. The sheriff's use of the word "consistent" on one occasion in his note regarding the proposed adjustments does not vitiate his clear understanding that the statute refers to a "coherent beam". That term is used in the finding in fact and law and throughout the body of the stated case. Similarly his use of the term "clear and persistent light" does not detract from his conclusion that what he and the witnesses were describing was a laser beam. Having correctly decided that as a matter of law there was sufficient evidence for him to convict he was entitled to do just that. The conviction of the appellant by the sheriff was not a miscarriage of justice.

[48] Finally, for the sake of completeness, it is noted that the stated case contains an error in finding in law [1] which refers to the tractor being driven by "Christopher Baillie". That is clearly a typographical error, there being no such person involved in this case. That person was obviously Cameron Baillie as is clear from the rest of the stated case. As the court and the parties read it as such for the purposes of the appeal there is no need for a formal correction of the stated case to deal with that error.

[49] There is one final matter which requires to be addressed. The dates between which the offence was committed as found by the sheriff in finding in fact [2] are slightly different from those which are libelled. As such, the Crown propose that in the event the appeal is refused the Court should remit the matter to the sheriff at Lanark to allow amendment of the complaint to correspond with the sheriff's finding in fact [2]. That is not the correct approach. Accordingly the conviction should be quashed and a conviction in the following terms should be substituted therefor:

> (001) on various occasions between 01 October 2023 and 7 November 2023 both dates inclusive, at Carstairs Mains Farm, Lanark you SAMUEL STEWART did shine or direct a laser beam towards a vehicle namely a tractor, which was moving or ready to move, and the laser beam dazzled or distracted, or was likely to dazzle or distract, the person with control of the said vehicle; CONTRARY to the laser Misuse (Vehicles) Act 2018 Section 1(1).

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Sheriff Principal G A Wade KC
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Appeal Sheriff C M Shead

OPINION OF SHERIFF D O'CARROLL

in

Appeal by stated case

by

SAMUEL STEWART

Appellant

against

PROCURATOR FISCAL, LANARK

Respondent

Appellant: Party
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29 April 2025

[50] I concur with the opinion of the Sheriff Principal in the chair.

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OPINION OF SHERIFF C M SHEAD

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29 April 2025

Laser Misuse (Vehicles) Act 2018

[51] This appeal raises a question of statutory interpretation: the proper meaning of the words "laser beam" where they appear in section 1(1) of the Act. The Act is a short one comprising only four sections one of which is an interpretation section. There is no dispute as to the mischief to which the legislation is directed.

[52] It is not controversial that it is the court's task to give effect to what is often referred to as Parliament's intention. In this connection it is worth bearing in mind the words of Lord Hodge in *R (Project for the Registration of Children as British Citizens)* v *the Secretary of State for the Home Department* [2023] AC 255 at paragraph 29:

> "Words and passages in a statute derive meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words Parliament had chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. "

[53] The court's task in interpreting the meaning of the words "laser beam" is assisted by the interpretation section of the Act contained in section 3. This defines laser beam as a "coherent" beam of light. That in turn raises the question of the proper meaning to be ascribed to the word "coherent".

[54] At trial neither party attempted to assist the court as to how the provision was to be interpreted. The Crown did not address the point in any detail in its submissions to this court.

[55] The appellant sought to persuade us that the word "coherent" should be understood in a particular way given the statutory context.

[56] In the opinion of the majority reference has been made to two possible meanings of the word "coherent" under reference to the definitions contained in the Oxford English Dictionary. The more specialised meaning is given as: "the action of a laser to emit light of a very narrow band width and considerable intensity-what is called coherent light".

[57] In the application for the stated case the appellant referred to the definition to be found in the Collins Dictionary and to excerpts from various academic papers drawing the distinction between coherent and incoherent light. As I understand it the concern of the

majority is that construing the word "coherent" in the way contended for by the appellant would be unduly technical not least because it would require expert evidence to establish the quality of the light under consideration in any particular case.

[58] I respectfully agree that it is not necessary to adopt a definition which would require the need for expert evidence as a matter of course and for that reason I would reject the appellant's submission on this point. For my part I would favour the more specialised meaning provided in the Oxford English Dictionary and set out above. Adopting that meaning seems to me to be in accordance with the exercise of statutory interpretation described by Lord Hodge in his judgement. I would reach that view applying the normal principles of statutory construction and without the need to resort to reference to Hansard. The meaning given includes the words "what is called coherent light". As the appellant pointed out, under reference to the materials lodged, the terms "coherent" and "incoherent" light are understood in a particular way in physics. In my view Parliament had these or similar scientific definitions in mind when choosing the word "coherent" to help define the words "laser beam". After all the primary purpose of the Act is to guard against the misuse of lasers only.

[59] It appears to me that adopting the definition to which I have referred would provide sufficient clarity and guidance when cases are prosecuted under the Act and would not necessitate the leading of expert evidence at least in the vast majority of cases. Very often the item used to create the beam will have been recovered and so there should be little difficulty in demonstrating its capabilities. In other cases there will be no dispute that the device emits a laser beam. In some instances, which are likely to be rare, recourse might have to be had to expert evidence to prove the nature of the light emitted by the device.

[60] Had it been necessary to do so, if regard is had to Hansard under reference to *Pepper* v *Hart* 1993 AC 593 on the basis that the word "coherent" is ambiguous, the statements made by the Minister appear to me to support the contention that a scientific meaning was deliberately chosen. For present purposes I refer to the second paragraph of the letter of 15 January 2018 sent by Baroness Sugg to Lord Craig of Radley following the Second Reading of the Bill which can be read together with the references to the statements made by the Minister contained in the materials put before us by the appellant. In my view that those are clear statements explaining the selection of the word "coherent".

[61] In this context I note that the courts have sometimes had recourse to reports of legislative debates even when the conditions set out in *Pepper* v *Hart* are not met. For example reference can be made to the judgement of the Court delivered by Thomas LCJ in *R* v *Ray* [2017] EWCA Crim 1391 at [30].

[62] Lastly I have taken into account the principle of statutory interpretation that arises because this is a penal statute. A person should not be penalised except where the law is clear and thus a strict construction of the statute is appropriate. Applying that principle also appears to me to favour the interpretation of the word "coherent" to which I have referred. I make the obvious point that the legislation is designed to catch only "laser beams" and not any other light source no matter how dazzling or distracting that source might turn out to be.

The stated case

[63] There are two questions raised: the first relates to the repelling of the no case to answer submission and the second to the sheriff's entitlement to convict. This court has had the benefit of supplementary written submissions on the two issues which it raised

following the hearing relating to the questions posed and the sheriff's reasoning more generally. I have taken those submissions into account in reaching my decision.

The first question

[64] In relation to the first question it should be noted that the appellant had been charged in the alternative with reckless conduct. On this point the sheriff says that had the common law charge stood alone he would have sustained the submission of no case to answer. I do not understand the Crown to suggest that the sheriff was wrong in that part of his analysis and therefore I proceed on that basis. Had the sheriff reached the opposite conclusion he would have been bound to have repelled the submission regardless of his view of the statutory offence.

[65] There was no expert evidence led by the Crown. Leaving out of account the police officer's evidence for present purposes the Crown case was reliant on the evidence of the two witnesses referred to and the video evidence. I gratefully refer to the summary of that evidence given in the opinion of the majority. Applying the definition I favour I have reached the view that there was sufficient evidence to entitle the sheriff to hold that there was a case to answer in respect of the allegation made under the statute. The descriptions given of the nature of the light by the witnesses seem to me to be clear enough to allow the relevant inference to be drawn. Accordingly I agree that the sheriff was entitled to repel the submission taking the Crown case at its highest.

The second question and the sheriff's reasoning more generally

[66] The sheriff records that the submission made on the appellant's behalf at the conclusion of the evidence reflected the argument made at the stage of the no case to answer

submission. The Crown submission appears to have gone no further than inviting the sheriff to conclude that the Crown witnesses were credible and reliable.

[67] Once the case was in draft form it is to be noted that the appellant proposed a number of adjustments and the Crown none. For present purposes I shall mention the sixth adjustment which was rejected by the sheriff because it was unnecessary and was not argued at first instance and in any event because the existing questions would "allow all relevant and appropriate arguments to be made".

[68] In substance the question was a challenge to the sheriff's ultimate conclusion (described as a finding in law in the stated case) that the appellant shone or directed *a laser beam being a beam of coherent light* (emphasis added) towards a moving tractor. Had the sheriff allowed the adjustment and added the question he would, no doubt, have framed another question directed to finding in fact 2 and the finding in law set out on pages 2 and 3 of the stated case. The Crown submitted that the primary reason for refusal was that the sheriff wanted to avoid posing unnecessary further questions for this court. In my view, at least with the benefit of hindsight, it would have been preferable for the questions to have been posed.

[69] The sheriff was right to say that the matter was not argued before him. However the question of whether the light was a beam of laser light as defined in the Act was still an inference he had to draw from the evidence and, as is obvious, it was a finding which he required to make if he was to find the appellant guilty. In other words it was an issue which he required to consider, there needed to be evidence to entitle him to make the necessary finding and he needed to explain the grounds of his decision.

[70] In terms of section 182(5) (f) of the 1995 Act this court may take account of any matter proposed in an adjustment rejected by the sheriff and the reasons for such rejection. As

noted the sheriff gives as one of his reasons that he considered "all relevant and appropriate arguments" could be raised at the hearing. In its supplementary written submissions the Crown appears to endorse the sheriff's view that all relevant and appropriate arguments could be made by the appellant. In any event it is not submitted that there is any procedural obstacle to this court considering all of the appellant's arguments. Accordingly I do not consider it necessary for the purposes of this appeal to consider the decision in *PF* v *Aziz* [2022] HCJAC 46.

[71] That brings me to the issue the appellant seeks to raise in this part of his submission. At page 11 of his written argument the appellant criticises the sheriff's reasoning as representing a misunderstanding of the statutory scheme.

[72] In commenting further on the proposed adjustment the sheriff notes, correctly, that none of the material from Hansard was before him. He also observes that it is possible to identify the mischief to which the legislation is directed by reference to the long title of the Act.

[73] However he goes on to say that "the definition of laser beam set out in the Act is wide ranging and not restricted to one produced by a laser". He then quotes subsection 3 and continues: "…the terms of the Act clearly envisage a red beam of consistent light being shone from a house onto a tractor as being caught by the section." It is to be noted that the sheriff refers to a "consistent" rather than a "coherent" beam of light. Both of these two points are criticised in the appellant's written argument.

[74] I turn now to consider section 178(2) of the 1995 Act the last part of which refers to the need to state "the grounds of the decision". The present section was enacted in the same terms as it had been in section 447(2) of the Criminal Procedure (Scotland) Act 1975. That section has been considered from time to time including in the case of *Petrovich* v *Jessop* 1990

SCCR 1. In that case the issue was whether it was proper to draw the inference that the appellant had the *mens rea* for theft. The High Court accepted that there were findings from which the relevant inference could be drawn but was critical of the absence of reasoning to support the drawing of the inference. The magistrate had not indicated satisfactorily that he had applied his mind with sufficient care to the real issue and it was emphasised that justice must not only be done but must be seen to be done.

[75] As the High Court said a trial judge must have "stateable and defensible" reasons for drawing the relevant inference. In allowing the appeal the High Court observed that none of the questions appended to the stated case satisfactorily focussed the true issue.

[76] Looking again at the stated case it is notable that at [18] in explaining why he rejected the submission of no case to answer the sheriff says that it was clear that there had been a "clear and persistent light" which had been pointed towards the witness. This formulation does not reflect the language of the Act. In the "conclusion" section all he says is that he accepted the Crown witnesses as credible and reliable to the effect that a red beam of light had been shone on various occasions. He says nothing about why he concluded that it was a laser beam as defined in the Act.

[77] Accordingly the issue, in light of the decision in *Petrovich*, is whether the sheriff has given "stateable and defensible" reasons for drawing the inference that the light was a laser beam within the meaning of the Act and whether justice has been seen to be done.

[78] In responding to this issue, under reference to the decision in *Petrovich*, the Crown submitted that [21] of the stated case set out the reasons justifying conviction and argued that considering the terms of the stated case as a whole "it is apparent that the sheriff has carefully applied his mind to the relevant issues."

[79] At para [21] the sheriff begins by saying that he accepted as credible and reliable the witnesses that a beam of red light had been shone on Mr Baillie when he was driving his tractor. He then considered and rejected the appellant's contention that the Crown required to prove the nature of the implement which produced the light. Lastly he explained that did not see any unfairness or prejudice to the appellant arising from the failure to produce the binoculars in court. Understandably these conclusions reflected the matters which were argued at the trial.

[80] However the conclusions in para [21] do not address the terms of the statute, its interpretation or how applying the statutory definition to the evidence resulted in the conclusion that the offence had been committed.

[81] Taking into account of the terms of the stated case including the two observations the sheriff has made at page 14 in the context of dealing with proposed adjustment number 6 and in the absence of any other detailed consideration of the statutory scheme I have decided that the sheriff has not given the stateable and defensible reasons which are required to support the drawing of the relevant inference which was necessary for conviction. In so far as it is necessary to address this as a separate point the lack of such reasons also gives rise to the conclusion that justice has not been seen to be done.

[82] In *Scott* v *Dunn* 2013 SCCR 382 the High Court applied the reasoning in *Petrovich* to the circumstances of that case. In quashing the conviction on the basis of the lack of reasons the High Court observed at [4] that the sheriff had made no detailed reference to the provisions of the statute which was then under consideration and emphasised the need to "pay close attention to the precise terms of the legislation and their scope and meaning."

[83] In reaching my decision it is important to recognise that the sheriff was not well served by the very limited submissions which were advanced at trial. He did not have the

benefit of more detailed argument including reference to academic writings and dictionary definitions. However it is clear that when the stated case was being prepared the appellant was seeking to bring under review whether the sheriff had applied the correct interpretation of the statute when deciding to convict.

[84] In my view it is not necessary to decide whether the second question posed is broad enough to encompass all of the appellant's arguments given the decision in *Petrovich*. As has been noted the High Court concluded that none of the questions posed satisfactorily focussed the true issue. As this decision demonstrates it is not always necessary to have the relevant questions contained in the stated case before the court is entitled to quash a conviction. Similarly in this case I do not consider that the second question satisfactorily focuses the true issue and accordingly it is unnecessary to answer it.

[85] In summary I agree that the sheriff was entitled to repel the submission of no case to answer and that the first question should be answered in the affirmative. I also agree that the absence of the binoculars did not prejudice the appellant for the reasons given by the majority. This appeal is not based on fresh evidence nor defective representation and even now there is no technical evidence that the binoculars emitted light of the kind described by the witnesses.

[86] However, differing from the majority, for the reasons given I have concluded that the appeal should be allowed and the conviction quashed.