SHERIFF APPEAL COURT

2025 SAC (Civ) 44
HAM-B856-24

Sheriff Principal N A Ross
Appeal Sheriff D O'Carroll
Appeal Sheriff J Kerr

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL N A ROSS

in the appeal in the cause

SECRETARY OF STATE FOR BUSINESS AND TRADE

Minuter and Respondent

against

GARRY PETTIGREW

Respondent and Appellant

Minuter and Respondent: Maciver, advocate; Womble Bond Dickinson LLP
Respondent and Appellant: Munro, solicitor; Livingstone Brown Limited

5 December 2025

[1] On 29 April 2024 the respondent and appellant, Mr Pettigrew, attended Hamilton Sheriff Court in connection with an evidential hearing. He was the respondent in an action in which the minuter and respondent (the "Secretary of State") sought to have him disqualified from the office of company director. He entered the room for pursuers' witnesses. There were several people within the room. Two of them, Daly and MacKintosh, he recognised through his dealings with them, both personally and as director of his company. The appellant took photographs of Daly and MacKintosh in the witness waiting room with his mobile phone.

[2] Later that day, and the next, photographs of Daly and MacKintosh, taken in the witness room, were posted on a social media platform. The photographs were accompanied by adverse and insulting comments directed against them. The posts attracted some replies and the posts and replies were in turn reposted by Mr Pettigrew. The posts were tagged to the username of Daly meaning that notifications of the posts and reposts would be sent to that username.

[3] On behalf of the Secretary of State, a minute for contempt of court was lodged and separate proceedings were commenced, founding on the taking and dissemination of the photographs with objectionable comments, and reposting replies. The writ claimed that the taking of photographs was unlawful, was a challenge to the authority of the court, and was apparently designed to intimidate and discourage witnesses, which was an interference with the proper administration of justice.

[4] Mr Pettigrew lodged defences claiming that he did not take the photographs or publish them, that he did not know that Daly and MacKintosh had been cited as witnesses for his case and did not know taking photographs was prohibited. Following proof the sheriff found, amongst other findings, that Mr Pettigrew had both taken and disseminated the photographs, that he had reposted them and the replies, and that a notice in the building informed court users that the taking of photographs was prohibited.

[5] The sheriff further found that the photographs were taken in breach of an express prohibition; were disseminated with the potential for misuse by third parties; were accompanied by offensive and derogatory comments against the witnesses; infringed the witnesses' privacy and dignity; and had the potential to prejudice the proper administration of justice.

[6] The sheriff found that Mr Pettigrew's actions amounted to a contempt of court and imposed a fine. The appellant's position on appeal is that, even on the facts as found by the sheriff, his actings did not amount to a contempt of court.

The appellant's submissions

[7] For Mr Pettigrew, it was submitted that the court could not rely on a protocol about photography which was published only on the Scottish Courts website. Banning mobile phones was unrealistic in modern society. Taking photographs would not automatically flout the court's authority.

[8] The status of Daly and MacKintosh was an important feature. Their names were not on the witness list for the hearing. Mr Pettigrew thought they were attending to listen to proceedings, not as witnesses. There could be no contempt by interference with witnesses. Further, in modern times, witnesses are frequently photographed entering and leaving the court building, and the photographs posted and reposted. Mr Pettigrew had a well-founded grievance about how his case had been treated by the Secretary of State. He had a right to say so in public, whether or not his beliefs were supported by the court. No crime had been committed, and the case law had to be read accordingly.

[9] In any event, if the witnesses now felt vulnerable, there were methods of taking evidence which would reduce stress, such as remote attendance, or other vulnerable witness precautions. The focus should be on the ability of the court to retain control, which had not been compromised.

[10] In relation to reposting, Mr Pettigrew was not a journalist so the limitations on photography contained within the Reporter's Guide on the SCTS website did not apply. A comparison with defamation law was apposite. Mr Pettigrew enjoyed Article 10 rights of

free expression, and the boundaries had not been breached. The actions did not meaningfully impact on the interests of the court or the conduct of the litigation. A further submission, that the sheriff erred in drawing certain factual inferences, was properly not insisted in.

The respondent's submissions

[11] For the Secretary of State, it was submitted the findings in fact were sound. In particular, in relation to the express prohibition on photography, there was a finding that a notice was displayed within the building. In any event, the absence of such a notice would not make a difference. The court determines what amounts to contempt: the important consideration was not intention, but the result. The sheriff had considered and explained the effect of the actings on these witnesses. The case law explained the wider effects on justice of interference with witnesses.

[12] References to *mens rea* were misconceived. All that was necessary was a deliberate act, which had been established here. It was not necessary to establish an intention that the act would achieve any particular effect.

[13] Reposting did not provide a defence, as it was mostly a continuation of the existing contemptuous activity of posting. Defamation was also irrelevant, despite references to European case law. Article 10 did not provide an answer and also contained a restriction which prohibited certain conduct in judicial proceedings. In general, the case law established that photography was a matter of concern to courts and was capable of amounting to contempt. The point was whether it amounted to a challenge to the authority of the court.

Decision

[14] Following proof, it was established that Mr Pettigrew took photographs of persons within a witness room within the court building and subsequently disseminated them, thus allowing them to be posted to a social media platform. They were accompanied by derogatory and insulting comments directed at those witnesses and their actings on behalf of the Secretary of State. The comments included personal remarks and allegations of a variety of dishonest and unprofessional actings. Mr Pettigrew reposted the original posts and derogatory replies including tags to Daly's username.

[15] The question for this court is whether the sheriff was correct to conclude that the actions of the appellant were capable of constituting contempt of court, and did in fact do so. Unlike England and Wales, there is no statutory prohibition on taking photographs in a Scottish court.

[16] The nature of contempt of court was authoritatively explained in *HM Advocate* v *Airs* 1975 JC 64 and *Robertson and Gough* v *HM Advocate* 2008 JC 146. In *Airs*, the Lord Justice-General (Emslie) stated:

> "… contempt of court is, however, not a crime within the meaning of our criminal law. It is the name given to conduct which challenges or affronts the authority of the Court or the supremacy of the law itself, whether it takes place in or in connection with civil or criminal proceedings. The offence of contempt of court is an offence *sui generis* and, where it occurs, it is peculiarly within the province of the Court itself, civil or criminal as the case may be, to punish it under its power which arises from the inherent and necessary jurisdiction to take effective action to vindicate its authority and preserve the due and impartial administration of justice."

[17] Contempt can be of different types and degrees. In *Robertson and Gough*, the Lord Justice-Clerk (Gill) stated, at para [32]:

> "In its minor forms, contempt of court may relate only to disciplinary matters of good order, such as where a spectator's mobile phone rings in court (*Williams v Clark*), or the accused, a juror or a witness is drunk (*Gillies v McClory*; *Elizabeth Yates*; *John Allan*; cf *Duffy v Munnik*); or a spectator takes a photograph of the judge,

> accused or jury (*R v D (Contempt of Court: Illegal Photography)*). In more serious cases there is a direct challenge to the authority of the court and the integrity of its proceedings, for example, where a witness refuses to take the oath or affirm (*Wylie v HM Advocate*). Contempt may also involve the commission of a crime such as perjury (*Manson, Petr*; Gordon, *Criminal Law*, vol 2, para 50.04), breach of the peace or an attempt to pervert the course of justice."

[18] In our view, the sheriff's decision to find Mr Pettigrew in contempt of court was sound. There were three distinct actions constituting contempt by Mr Pettigrew. The first was deliberately taking photographs of individuals in the court building, directly contravening the prohibition contained in the public notice displayed in the court building. The second was deliberately disseminating the photographs and causing them to be posted on a social media platform. The third was deliberately reposting the posts, comments and replies. Each action challenged the authority of the court. Each threatened the due and impartial administration of justice. Mr Pettigrew's actions, taken together, amounted to a direct and serious challenge to the integrity of court proceedings.

[19] In isolation, in the absence of any sinister context, a single act of photography might amount only to a minor contempt, as *Robertson and Gough* suggests. If such an act were not accompanied by dissemination of the photographs, that might (depending on circumstances) amount only to an indirect challenge to the authority of the court, without material effect on the court proceedings.

[20] However, in this case, the subsequent actions of the appellant in disseminating the photographs, then reposting them with added insulting comments, replies and tags, represented a much more serious threat to the integrity of the court process. Those actions amounted to a direct challenge to the court by tending to intimidate witnesses and others, to undermine their willingness to participate in the court process, and to affect the quality of their evidence. Delivery of justice in the courts depends on the engagement of the public.

Justice cannot be served properly without the attendance and participation of witnesses, among others. Those who have duties to discharge in a court of justice are protected by the law and must be shielded on the way to discharging their duties. Anything which interferes, or may foreseeably interfere, with the giving of full and uninfluenced evidence by members of the public, is an interference with the delivery of justice and amounts to a challenge to the authority of the court. Mr Pettigrew's actions were objectively likely to deter witnesses and others from attending, to distract and dismay, and ultimately to detract from the quality of evidence available to the court. A fundamental basis on which the court administers justice, namely the hearing of factual and expert evidence, was compromised. As LCJ Bingham put it in *R* v *Smithers and Bowen* (1983) 5 Cr App R (S) 248, 249:

> "Generally it is essential that those who give evidence in a court of law should be protected from insults and abuse. It is not an agreeable task to give evidence at the best of times, but it is very much more disagreeable if conduct of this kind is allowed to flourish. The administration of justice depends on witnesses coming forward, and they must be confident in doing so that the law will protect them".

The potential prejudice to the administration of justice was illustrated in the present case, where more than one of those present in the witness room, including the witness Daly, spoke to now being apprehensive about returning to court. However, proof of such an effect is unnecessary for a finding of contempt. It is enough that the court determines objectively that the actions in question amount to a contempt. In the present case the necessity of the court taking effective action to vindicate its authority and preserve the due and impartial administration of justice (*Airs*, above) was established.

[21] On behalf of Mr Pettigrew, several arguments were advanced in his challenge to the sheriff's finding of contempt. The first was to challenge the finding that there was a sign in the court banning photography. This ground comes to nothing, because there was evidence,

which the sheriff accepted, that there was such signage. The submission offered only an alternative explanation, which did not support the appeal.

[22] The second argument was that Mr Pettigrew did not know that these were witnesses in his case, instead of merely spectators. This was described as a key point. In our view, leaving aside the gap in credibility arising from their presence in the pursuer's witness room, that point was not relevant. The contempt arose from photographing court users inside the court building, irrespective of why they were there, together with the dissemination of the photographs and reporting with abusive and insulting comments. Mr Pettigrew's intentions, or knowledge, were not relevant factors. The *mens rea* required for contempt is intent to do the actions complained of, not intent that the action constitutes contempt (*Robertson and Gough* at para [75]). Any public misapprehension that courts tolerate photographs being taken within the court premises is capable of significant deterrent effect, both as to attendance and as to the quality of evidence given. Accordingly, it did not matter if Daly or MacKenzie were witnesses in Mr Pettigrew's case, or in another unrelated case, or were merely present to monitor proceedings. The fact that Mr Pettigrew knew the individuals in question in this case were connected with his case on behalf of the petitioners served to increase the seriousness of his act of contempt.

[23] The third argument was that the material did not meet the definition of defamatory material under reference to the Defamation and Malicious Publication (Scotland) Act 2021, section 3(3). That is irrelevant. The mere fact of publication was a challenge to the integrity of the justice process. There was no requirement for the material to be defamatory, or indeed to amount to either a civil wrong or a criminal offence. The fact that the material was undoubtedly insulting and abusive was an aggravating factor. It mattered not whether it amounted to defamation.

[24] The fourth argument was that Mr Pettigrew had reason to be dissatisfied with the principal proceedings, and the conduct of the Secretary of State. That meant that he was entitled to comment, a freedom protected by Article 10 of the European Convention of Human Rights. Reliance was placed on *Magyar Jeti Zrt* v *Hungary* (Application no.11257/16) (4 December 2018), in relation to freedom of expression in journalism. We do not agree that Article 10 assists his defence. The terms of Article 10(2) provide:

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society … for maintaining the authority and impartiality of the judiciary."

[25] The right not to be photographed, publicly shamed or intimidated is clearly preferred to any possible right of Mr Pettigrew to shower insults and public condemnation upon court users. We found no assistance in *Magyar Jeti Zrt*, which revolved around publication by a journalist of a hyperlink which was found to be defamatory. The present case involved creating material, not merely sharing it, and did not relate to defamation. Reposting in the present appeal was merely the last element of a course of conduct.

[26] The fifth argument was that the sheriff had insufficient material to prove that the actions infringed the witnesses' privacy and dignity and had the potential to intimate witnesses. In our view that is misconceived. The sheriff was not limited to considering the evidence of the witnesses. It was not necessary for evidence as to the witnesses' feelings to be led at all. It remained at all times a matter for the court to assess likely consequences. As we have said, it was not necessary to prove actual infringement of privacy and dignity, or that the contemnor intended the result. Publication of photographs, accompanied by abusive messages, in these circumstances, objectively amounted to contempt of court.

[27] Accordingly, none of these arguments undermine the sheriff's conclusions on the matter of contempt.

[28] For completeness, the sheriff referred to a protocol on recording which was set out on the SCTS website. There was no evidence that Mr Pettigrew was aware of that protocol. In our view, that reference did not affect the basic position that photography is already recognised to be a challenge to the court (*Airs*, above).

Disposal

[29] The appeal is refused. Parties agreed that expenses should follow success. The respondent has been wholly successful, so we will find the appellant liable to the respondent in the expenses of the appeal, as taxed.