SHERIFF APPEAL COURT

[2023] SAC (Crim) 13
SAC/2023/225/AP

Sheriff Principal Pyle
Sheriff Principal Wade KC
Sheriff Cubie

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL PYLE

in

STATED CASE - APPEAL AGAINST CONVICTION

by

PAUL MATTHEWS

Appellant

against

PROCURATOR FISCAL, ABERDEEN

Respondent

Appellant: Culross; Faculty Services Ltd
Respondent: Glancy (sol adv); Crown Agent

8 August 2023

Introduction

[1] The appellant was charged with an assault of a police officer by attempting to head butt him, contrary to section 90(1)(a) of the Police and Fire Reform (Scotland) Act 2012. At trial and after the Crown evidence was led, the appellant made a submission of no case to answer, which the sheriff repelled.

[2] The relevant parts of section 90 of the 2012 Act are in the following terms:

"Assaulting or impeding police

(1) It is an offence for a person to assault—

(a) a person ('A') acting in a capacity mentioned in subsection (3), or

(b) a person assisting A while A is acting in such capacity …

(3) The capacities are—

(a) that of a constable …"

[3] The ground of appeal was that the sheriff erred in repelling the no case to answer submission which was that there was no corroboration that the complainer was acting with lawful authority in the execution of his duty as a constable.

Appellant's submissions

[4] The principal evidence of lawful authority came from the complainer who was a police constable on duty and in uniform. His evidence was that allegations against the appellant had been made by a neighbour, as a consequence of which the complainer believed that he had reason to caution and arrest the appellant. The complainer and another constable attended at the appellant's home which was in a block of flats. After speaking to the complainer through his letterbox, the appellant opened the door and allowed the constables to enter. He was cautioned and arrested. He was taken outside the flat on to the common hallway where he was handcuffed. As the complainer was taking the appellant downstairs the appellant tried to head butt him. The other constable did not give evidence. Instead, evidence was led by a further constable who attended after the arrest had taken place and saw only the attempted head butt. Thus, there was no corroboration of the evidence of the complainer about the arrest. The acting with lawful authority in execution

of duty was an essential part of the charge which the Crown required to prove. In particular, the Crown required to prove that the complainer had entered into the appellant's flat at his invitation. Reference was made to *McCallum* v *Richardson* 2019 JC 125.

Crown submissions

[5] The Advocate-depute submitted that the Crown required to prove that the constable had the capacity set out in the Act, but that it was unnecessary for his evidence to be corroborated. There was no evidence that the complainer was acting unlawfully.

Decision

[6] It is important to recognise the requirements of the Act, namely that the offence is an assault on a constable acting in that capacity. There is no dispute that the complainer was a constable and was acting in that capacity at the time of the attempted assault. It is only those facts which have to be established by corroborated evidence. They are the *facta probanda*. *McCallum* v *Richardson* is not in point. In that case the issue was the unlawful action of constables by entering into the home of the accused for the purposes of detention under the now repealed section 14 of the Criminal Procedure (Scotland) Act 1995. The appellant's submission is a reflection of the now repealed section 41(1)(a) of the Police (Scotland) Act 1967. That is not to say that if the complainer had been acting unlawfully in arresting the appellant the offence is made out. But that is different from the question of what are the *facta probanda* of an offence under the 2012 Act.

[7] We answer the questions in the stated case as follows:

1. "Did I err in in law in repelling the no case to answer submission?" We answer that in the negative.

2. "Was I entitled to make the findings in fact and to convict the appellant?" We answer that in the affirmative.

The appeal is refused.