SHERIFF APPEAL COURT

[2019] SAC (Crim) 17
SAC/2019/000352/AP

Sheriff Principal D L Murray
Sheriff M O'Grady QC
Sheriff A MacFadyen

OPINION OF THE COURT

delivered by SHERIFF M O'GRADY QC

in

STATED CASE

by

STANLEY MURISON

Appellant

against

PROCURATOR FISCAL, ABERDEEN

Respondent

Appellant: Findlater; Faculty Services Limited
Respondent: Cameron AD (sol adv); Crown Agent

22 October 2019

[1] Briefly put, the appellant proceeded to trial on the instant complaint at Aberdeen Sheriff Court and on 5 February 2019 was convicted of charges (001), (002) and (004), the last two being subject to minor amendment. All three charges are the subject of appeal against conviction.

[2] We have listened to argument and have considered the case law helpfully referred to by parties.

[3] There are essentially two thrusts to the appeal, and it is perhaps convenient to deal with them in reverse order.

[4] In relation to charge (004) it was acknowledged at all hands that the only corroboration available for this charge would come by the application of the *Moorov* doctrine, it being found in charge (001) or (002) or both. It was argued before us that, even at its highest, there was insufficient connection in time, character and circumstance between the material charges to bear the application of *Moorov*. We do not rehearse that argument here or review the authorities to which we were referred but, suffice it to say, we are satisfied on the merits of that submission and have concluded that there is not a similarity – in either charge (001) or (002) - which would entitle us to infer the underlying unity of intent required for conviction on charge (004).

[5] The gap between this charge and charge (002) is a minimum of 6 ½ years and may be as much as 8 ½. That does not per se put it beyond the operational range of *Moorov* but it is well settled that when the time gap is so lengthy, the other elements will require to be correspondingly stronger if the rule is to be safely applied. In the case of charge (004) however, while there are similarities to charges (001) and (002), there are striking dissimilarities.

[6] In charges (001) and (002) the relationship between the appellant and complainers came about through working together; he was in a position of some authority over them; the locus in each case was work related; the offences were committed in the course of his employment; each complainer was older than the complainer in charge (004) in that each was a young adult. These features are in marked contrast to the circumstances of

charge (004) in terms of relationship, age, locus and other circumstances. When set against the time factor, these elements were in our view sufficiently undermining of the Crown case that the submission in respect of charge (004) should have been upheld.

[7] That leaves charges (001) and (002).

[8] The argument in relation to these was based upon the proposition that, while *Moorov* could as between the crimes themselves, there was an insufficiency in respect of identification which was fatal to both charges.

[9] It was accepted that there was a positive identification of the appellant in respect of charge (001). It was a matter of concession by the Crown and Sheriff that there was no such positive identification of the appellant by the complainer in charge (002) and that – if it existed at all – identification in respect of that charge could only be by way of circumstantial evidence. Again, we do not rehearse the argument in this regard, but in the end the submission was distilled to this; it was clear from the authorities that identification in charge (002) could, in principle, be proved by circumstantial evidence; this is amply supported by *Murphy* v *HMA* 2007 SCCR 532. Nonetheless, it was argued that the law required that in that event identification in charge (001) had to be spoken to by two direct sources of evidence. In advancing that proposition the defence relied upon the case of *P(B)* v *Williams* (2005) SCCR 234 page 237 et seq. In our view such a proposition is too narrow; what is stated in that authority and what is required is positive identification from two sources; but those sources need not be confined to complainers.

[10] This falls to be crucial in the present case because – again as a matter of concession – the sheriff clearly accepted as credible and reliable (as he was entitled to do) the direct identification of the appellant by the complainer in charge (004). Though that charge is no

longer extant, the evidence from it remains available in respect of other charges, and in particular remains available for the purposes of identification.

[11] Again we do not rehearse them, but in paragraphs 33 to 37 the learned Sheriff sets out various facts and circumstances which support identification of the appellant as perpetrator. When to this is added the entirely admissible and relevant evidence from the complainer in charge (004) who positively identifies the appellant as Stanley Murison then there is ample circumstantial evidence to identify him.

[12] Accordingly we uphold the convictions in respect of charges (001) and (002). We answer question 1 in the affirmative quoad charges (001) and (002) and in the negative in respect of charge (004). We answer question 2 in the affirmative in respect of charges (001) and (002) and in the negative in respect of charge (004).