

Sheriff 2016 - Fort William and Oban

Criminal Case Study

The following information was provided to applicants in advance of the interview.

You are presiding over a Jury trial in which you have been preparing your Charge. The evidence has concluded and speeches made by the Crown and defence. You are not required to prepare or read the actual Charge you would deliver but please explain:

- how you would deal with the following aspects,
 - the legal principles guiding your decisions and
 - the key points you would or would not include in your Charge:
1. The e-mails sent by JG, the complainer in charge 3 and especially whether they constituted prior statements which could be seen to be inconsistent with her evidence in court;
 2. The evidential value of the prior statements containing the allegations of TG and GG relating to the withdrawn charges 1 and 2;
 3. The issues of credibility arising from the conflicting evidence of the witnesses JG and PC in relation to charges 3 and 4 where the Crown relied upon the principle of mutual corroboration;
 4. Evidence of distress;
 5. The purported inconsistencies between the prior statement of the complainer in charge 5 and her evidence in Court;

Narrative

Indictment

AB was charged at the instance of the right honourable Frank Mulholland, QC, Her Majesty's Advocate, on an indictment libelling that:

“(3) on various occasions between 1 April 2012 and 30 March 2013 ... at 15 Church Place, Anytown ... you ... did sexually assault JG ... in that you repeatedly put your arms around her, press your body against her, touch her on the body, vagina, pubic area, buttocks, breasts and face and kiss her on the face and neck; CONTRARY to Section 3 of the Sexual Offences (Scotland) Act 2009;

(4) on various occasions between 01 January 2013 and 27 January 2014 ... at 15 Church Place, Anytown ... you ..., a person who had attained the age of 16 years, did engage in sexual activity with or towards PC ... a child who had attained the age of 13 years but had not attained the age of 16 years, in that you did kiss her on the lips, touch her on the body and place your hands on her buttocks and pinch her buttocks; CONTRARY to Section 30 of the Sexual Offences (Scotland) Act 2009.”

And

(5) on 15 September 2015 at 15 Church Place Anytown you did assault RS by grabbing her by the face, slapping her and pushing her violently, you did remove your lower clothing, force RS to remove her lower clothing, place your arms around her, touch her on her breasts, buttocks and vagina, insert your finger into her vagina and did attempt to rape her;”

The Indictment originally contained two other charges but these were dropped and convictions were not sought by the Crown. The complainers in charges 1 and 2 nonetheless went on to give evidence.

The evidence

Complainer JG – Charge 3

- [1] The complainer in charge 3 gave evidence regarding five specific assaults. The first occurred in the accused's home in April 2012, when the accused had hugged her, caressed her back, kissed her neck and the side of her face and pressed his body against hers.
- [2] The second was in March 2013, again in the home of the accused, when the accused had the complainer kneel down in front of him and, beginning by touching the top of her head, he had worked his way down her body, eventually touching her chest, bottom, between her thighs and then her legs and her toes. The third incident was in mid 2012 when the accused hugged the complainer by lifting her off her feet and kissing her on the neck more than five times. The fourth occasion was on the same day, when he touched her stomach and moved his hand down her body to her private parts, touching her vagina. The final incident occurred in December 2012 or January 2013 when the accused had said “come on, are you not going to give your daddy a hug”. She had not replied. The accused had put his arms around her, lifted her up and started to kiss her neck with his lips.
- [3] In the course of cross examination, a number of emails were put to the complainer. These had been sent by her to the accused after the events libelled. In particular, on 15 March 2013, she had written: “I love you darling. Was just thinking of you NOW in my kitchen. I was thinking of your voice, your presence your cuddle. I love you.”
- [4] Finally, on 27 March 2014, she had written: “Darling my hero my my rock. I know you busy in Aberdeen but I want you to know I will stay with you no matter what ... I love you wish I could hug you right now.”
- [5] On 20 October 2014, she had written: “... I misinterpreted your love for me for abuse. The love you have for me is not understood by other people and in my distress I misunderstood that love you had for me for abuse. You did nothing wrong to me and all you ever wanted was to show me your love. If you allow

me I want to clear your name publicly, and restore your reputation to the world.”

The complainer accepted that she had written these emails. She said that they were true when they had been written but she denied in Court that they reflected how she felt about the accused and his actions now. She felt bitter towards the accused, abandoned by him and let down by his broken promises. She wanted to see him in jail. She admitted that she had spoken to PC about the accused and what he had done to her.

[6] There was evidence taken from this complainer about her finances. She appeared to be suggesting, during the course of her examination in chief, that there had been some misconduct in that regard by the accused. This was subsequently contradicted by her mother.

Complainer PC – Charge 4

[7] The complainer in charge 4, who was born in 1998, spoke to four incidents. First, sometime in the course of 2013, she was visiting the accused's home. She had been made to put her hands on the accused's chest. He had placed his hand on her chest around her left breast. A couple of months later, the complainer had been sitting in the living room when the accused had come over and sat beside her. He put his right hand on her left thigh. He ran his hand up and down her thigh. The third incident was in late 2013, when the complainer was in the TV room. The accused had come in, put his hand around her lower back and run it down until it got to her underwear, which he began to ping. He slid his hand down her bottom and pinched it. The final incident was in early 2014, when the accused was in the dining room. The complainer was kneeling by his chair. He said “you always be mine” and kissed her on the lips.

In the course of her evidence, the complainer was referred to a particular Facebook entry about the accused exhorting his innocence of the charges, which she initially

denied seeing. Later, under cross examination, she accepted that she had effectively lied about this in court and had in fact 'liked' the entry at the time it was posted.

[8] The third witness for the Crown was GG, who was adduced in support of the then charges 1 and 2. GG denied that anything untoward had happened towards her. She accepted that she had made a relatively detailed statement to the police containing the allegations in the original libel. These involved being induced to massage the accused when she was under 13 and later when she was under 16.

[9] In due course the accused led TG, the former complainer in the original charge 1. She too spoke to having made certain allegations about being induced to massage the accused, which she had then withdrawn. She denied the truth of these allegations in evidence.

[10] The evidence of the complainer in charge 5 was that she had been in the company of her boyfriend and the accused in the course of the evening, latterly at her own flat; they had all been drinking, and her boyfriend had become argumentative and abusive; she argued with him, and asked him to leave, meaning leave the room, not the flat; he however misunderstood and left the flat, but remained outside causing a commotion; the complainer's mother arrived and entered the flat; the accused seemed annoyed at the boyfriend, wanting to go outside and went to speak to him; the complainer stopped him from doing so; the accused assaulted her by putting his hands to her face and squeezing her cheeks together and pushing her head back; he then slapped her on the face with some force; at that point the complainer's mother left; although there had been no discussion to this effect, the complainer thought her mother would contact the police; thereafter the events narrated in the charge occurred; the accused admitted most of these, stating that he had been "chancing his arm" with the complainer. She had been looking out of the window at her mother leaving. The accused was on the same sofa.

[11] When asked if she wanted the events to happen she said “no”. She repeatedly told the accused that she was with her boyfriend, and “This wasn’t happening between me and him”. The complainer gave evidence that when her mother first arrived the accused had made inappropriate remarks about her mother, and put his arm around her. The complainer told him to get off her mother. She also stated that the accused was a stranger to her and that she had first met him that day.

[12] Certain aspects of the police statement put to the complainer in cross-examination were consistent with her evidence in chief. However:

- She said she didn’t know her boyfriend was outside the flat prior to her mother arriving, had not heard him banging or shouting to get in, yet her statement referred to his presence at that time.
- In her statement she said she had prevented the accused from leaving the house, that he had kissed her, and that this preceded an altercation between the accused and the complainer’s mother. In her evidence she said that what she had said in the statement was untrue, and in fact that when the accused had been heading towards the door, seemingly to try to get at her boyfriend who was on the other side of it, he squeezed the complainer’s face really hard and pressed her head backwards. His hand was on her mouth and his thumb and fingers on either side of her face. He then slapped her with a “forceful enough” blow. No mention of the slap had been made in the statement.
- She accepted that she had given the police an untrue account of the circumstances in which her mother had been asked to leave the flat. In evidence she mentioned the advances made to her mother, and said that her mother left after the complainer had been assaulted by the accused, realising that the police should be called but that the complainer could not do it. In her statement she said that she heard her mother say “let go of me” but “I can’t remember what he was doing to her”. In her statement she said the reason her mother left was that she had taken exception to the presence of a syringe, and that the complainer had forced her mother to leave.
- She agreed she told the police she had gone to the window to check that both her mother and her boyfriend had left, but this was not true.

- Although she told the police that the accused had managed completely to remove her trousers and pants, her evidence in court was that these items had not been completely removed from her legs.
- A similar issue arose in relation to the accused's clothing, her statement indicating that he stood and removed his trousers and pants, her evidence suggesting that they were not completely removed.
- She was challenged about that part of the statement in which she said that she had encountered the accused a number of times in passing, and said "hi". This was in contrast to her assertion in court that the accused was a complete stranger to her whom she had met for the first time that night.

Speeches – some points arising

[13] The defence went further than challenging the credibility of the complainers in charges 3 and 4 and pointed out to the Jury that JG had disclosed an interest in having the accused convicted for reasons unrelated to the charges. It was suggested that there was a possible conspiracy against the accused and collusion between the complainers with a suggestion that in relation to the Facebook entry PC had committed perjury in relation to a central issue in the case.

[14] On the issue of distress, defence counsel submitted that the evidence would allow the Jury to conclude that any distress observed was unconnected with the relevant charge. On the matter of possible inconsistencies between the complainer's evidence and her statement this was simply a matter of credibility for the Jury. The Procurator Fiscal Depute suggested to the Jury in relation to the distress of the complainer that it offered corroboration of the accused's acts.

[15] The Crown suggested to the Jury that the inconsistencies between the complainer's evidence and her statement were such that they could expect the Sheriff to give them directions to assist them in approaching these. The Crown relied upon the principle of mutual corroboration for these charges and

suggested to the Jury that they could accept the evidence of the witnesses JG and PC in support of charges 3 and 4.

[16] In relation to TG and GG, the complainers in the first two charges on the Indictment which were withdrawn by the Crown, the Procurator Fiscal Depute suggested to the Jury that both witnesses were lying and suggested that the information they had originally provided to the police was true.

[17] The Jury heard from the defence in relation to charge 5 that parts of her police statement put to the complainer in charge 5 showed inconsistencies with her evidence in court and reflected on her credibility and reliability.