

SCOTLAND / JUDGMENT

BOWES v PF GREENOCK [2014]

ScotHC HCJAC_83 (24 July 2014)

[2014] ScotHC HCJAC_83

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[2014] ScotHC HCJAC_83 [New search] [Help] APPEAL COURT, HIGH COURT OF JUSTICIARY
Lady Paton Lord Drummond Young Sheriff Principal Lockhart

[2014] HCJAC 83 HCA/2014/002051/XM OPINION OF THE COURT delivered by LADY PATON in
APPEAL BY STATED CASE by JOHN BOWES Appellant ; against PROCURATOR FISCAL
GREENOCK Respondent :

Appellant: Ms Ogg Sol Adv; The Robert Kerr Partnership, Greenock Respondent: Fairley QC AD;
Crown Agent 1 July 2014

- [1] We note that the only issue which has passed the sift is the identification of the appellant as the assailant.
- [2] In our opinion there was sufficient evidence entitling the sheriff to repel the submission of no case to answer in relation to charge 1. The evidence is set out at pages 2 to 4 of his report. The complainer in her evidence clearly identified the appellant as the person who hit her in the face and on the leg. Her credibility was enhanced by her de recenti statement to her sister-in-law Brenda Bowes when she explained “John has knocked my tooth out”. That was not, of course, corroboration but it supported the clear, unequivocal identification of the appellant by the complainer. As for corroboration, the complainer’s evidence was corroborated in our view by circumstantial evidence (that is, a series of circumstances tending to point to the truth of what the complainer said). The most important strand of circumstantial evidence was voice identification. This was the evidence of the appellant’s sister-in-law Brenda Bowes who heard two voices over the telephone when she received a telephone call from the complainer. Brenda Bowes recognised one of the voices as the complainer’s and one as the appellant’s. She described hearing the appellant shouting in an

aggressive manner. The complainer by contrast was heard to be saying “Please don’t. I’ve got the baby in my arms”. These voice identifications were very important and perhaps on one view sufficient to provide corroboration. But there was more. There was evidence that the persons in the flat were the appellant, the complainer, the complainer’s son Neil, aged 23, and a baby aged under 12 months. Throughout the case it has never been suggested by anyone that either the son Neil or the baby had anything to do with inflicting injury on the complainer. The case of *Gilmour v Her Majesty’s Advocate* 1994 SCCR 133 cited by Miss Ogg for the appellant can be distinguished in respect that there, a customer visited a shop and then left although returning later. In the present case what happened was taking place in a flat where the people referred to above were present and remained present throughout.

- [3] It has been authoritatively decided that a complainer’s clear and unequivocal evidence of identification supported by some further source of evidence is sufficient for corroboration. In *Ready v Her Majesty’s Advocate* 2009 SCCR 380 at paragraph 13 the court commented: “The starting point in this case was a clear and unequivocal identification by the complainer of the appellant who is apparently known to him as being his assailant.” In such a case very little may be required in the way of corroboration of identification That is certainly the situation here.
- [4] In all the circumstances we are quite satisfied that the complainer’s clear and unequivocal evidence of identification was sufficiently corroborated as we have indicated. We accordingly answer the question at pages 6 to 7 of the stated case as follows: question 1 in the affirmative, question 2 in the affirmative and question 3 in the affirmative. We therefore refuse the appeal. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotHC/2014/2014HCJAC83.html>

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Prepared on 28 October 2026 · Esheria