



SHERIFF APPEAL COURT

[2022] SAC (Crim) 6
SAC-2022-000061-AP

Sheriff Principal M W Lewis
Sheriff Principal N A Ross
Appeal Sheriff A L MacFadyen

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL M W LEWIS

in

Appeal by Stated Case against Conviction

by

AM

Appellant

against

PROCURATOR FISCAL, AIRDRIE

Respondent

Appellant: W Hay, R Brown (sol adv); Faculty Appeals (for Dunipace Brown, Cumbernauld)
Respondent: A Edwards QC; Crown Agent

24 May 2022

[1] The issue in this appeal is whether being in possession of a knife with the intention of using it to commit suicide is a reasonable excuse in terms of section 49(4) of the Criminal Law (Consolidation) (Scotland) Act 1995 (as amended).

[2] The appellant was charged with a contravention of section 49(1) of the 1995 Act by having with him a knife in a public place without a reasonable excuse or lawful authority. After trial, he was convicted and then admonished. He now challenges that conviction by way of stated case. There are two questions posed in the stated case:

(1) Did I err by holding that the statutory defence of reasonable excuse was not proved?

(2) On the facts stated was I entitled to convict the appellant of a contravention of section 49(1)?

[3] The facts are uncontroversial. The Crown case was encapsulated in three joint minutes of agreement. The appellant gave evidence. The summary sheriff found him credible and reliable.

[4] In summary the appellant has a long history of mental health issues. He has attempted several times to commit suicide. On 25 January 2020 he was admitted as an inpatient at Wishaw General Hospital. Having been assessed by the psychiatric team, he was discharged on 14 February. On the afternoon of 22 February he decided to kill himself in Kildrum Woods. He took a knife from his kitchen and set off to his destination. On route he slashed his jacket with the knife. He telephoned NHS 24. That agency in turn contacted the Police. Two police officers headed to the locus. They encountered the appellant walking along the public footpath next to Cumbernauld High School. They saw the appellant walking towards them with his arms outstretched. He had a knife in his right hand and his mobile phone in his left hand. He was still conversing with NHS 24. He was compliant with the instruction to drop the knife and was fully cooperative with the police officers and subsequently with the psychiatric team at Monklands Hospital. The appellant did not injure or attempt to injure any member of the public or the police officers who attended the locus.

The sheriff concluded that the appellant had no reasonable excuse for possession of the knife (finding in fact 22).

[5] Counsel for the appellant made a series of general propositions -

(a) Each case must be assessed on its own facts and circumstances (*Lister v Lees* 1994 SCCR 54 at para 553);

(b) The court must consider whether the statutory defence of reasonable excuse is available;

(c) If it is available, the court must then determine whether the evidence supports the statutory defence; and

(c) Being in possession of a knife for the intention of self-harm engages the reasonable excuse statutory defence.

She submitted that the summary sheriff erred in a number of respects in relation to propositions (b)-(d). She criticised him for relying too heavily upon three English cases - *Bryan v Mott* [1976] 62 CR App R 71, *R v Norton* [1977] Crim L R 478, and *R v Fleming* [1989] Crim L R 71 – which led him to determine wrongly, that the statutory defence of reasonable excuse was not available to an individual contemplating suicide through use of a knife.

These cases are of considerable antiquity, of their time, and of no relevance to the appropriateness of criminalising those who are suicidal, having regard to modern standards and understandings on trauma and mental health. There is no Scottish authority in point.

[6] In determining whether an explanation tendered amounts to a reasonable excuse the court should have regard to the purpose of the legislation. If the legislation contains a general prohibition, the court must determine whether the explanation constitutes a justifiable exception to that prohibition. Section 49(1) contains a general prohibition. The purpose of that section is not to punish the suicidal but to protect the public from the risk of

injury from those in possession of knives. There was no evidence of risk to the public or even potential risk to the public. The appellant at the time of the offence was in a fragile state of mental health. He intended to take his life in a secluded wood and was carrying the knife for that purpose.

[7] To have an item for self-harm is not a criminal act. Suicide is not a criminal act (Gordon *Criminal Law 3rd Edition* paragraph 30.45). The explanation is not inconsistent with the purpose of the section 49(1) offence. All of this was accepted by the summary sheriff but he wrongly concentrated on the risks of being in possession of bladed articles.

[8] Counsel submitted that the legislation is not intended to criminalise those who are experiencing severe mental health episodes. The court was invited to clarify the law in Scotland on the availability of the statutory defence to those whose intention is only to injure themselves and not to injure others.

[9] The Advocate Depute invited us to answer question one in the negative and question two in the affirmative. The issue at the heart of the appeal requires to be determined having regard to purpose behind the 1995 Act and the test set out in section 49(1) and (4). The sheriff did not err in either respect. His reasoning is set out clearly in paragraphs 6, 7, and 21-23 of his Stated Case. Whether a prosecution should have been brought at all is a different issue and not one for this court.

Decision

[10] In so far as relevant to this appeal section 49 provides as follows:

- (1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence ...

(2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed ...

(4) It shall be a defence for a person charged with an offence under subsection (1) above to show that the person had a reasonable excuse or lawful authority for having the article with him in the public place.

[11] We acknowledge that the purpose of the 1995 Act is to protect the public from the risk of injury from those who may use articles to cause injury or to threaten others.

Section 49(1) contains a clear prohibition. Subsection (4) provides a statutory defence of reasonable excuse. It was not disputed that the burden of proving the section 49(4) defence rests on the appellant and that the burden of proof is on the balance of probabilities. The court must therefore determine whether the explanation tendered by way of defence “appears to constitute a justifiable exception to the general prohibition in the legislation” (*Lister v Lees* 1994 SCCR 548).

[12] The tasks facing the summary sheriff were to consider whether the statutory defence was available and then whether the evidence supports the statutory defence. The summary sheriff, in our view, approached those tasks with care and sensitivity. He had due regard to the legislative regime. He carried out a careful review of the English authorities and in each he considered the facts, the applicable legislation and drew appropriate distinctions. He concluded at paragraph [23] that “the circumstances provide an explanation for his behaviour but not a justifiable exception ... I conclude that the statutory defence has not been made out”.

[13] It is correct that there are no Scottish authorities directly in point. However paragraph 30.45 of Gordon *Criminal Law 3rd Edition* merits repetition –

“In short, the excuse may be reasonable provided it is not inconsistent with the purpose of the statutory offence. The fact that the purpose for which the weapon is carried is not illegal does not of itself provide a reasonable excuse [*Brown v Farrell* 1997 SCCR 536]. The test may be whether a reasonable person would think it excusable to have the weapon for that purpose.

In England and Wales it has been held that carrying a weapon in order to commit suicide is not a reasonable excuse, the whole purpose of the section being to discourage people from being in public places ‘tooled up’ with weapons of this kind.”

[14] We recognise, as did the summary sheriff, that the purpose for which the item was carried, in this case self-harm, is not unlawful (Gordon, *ibid* paragraph 30.45). But that does not of itself mean that the defence of reasonable excuse is available. The submission that it does fails to take into account the purpose of section 49(1). Parliament decided that the carrying of bladed articles such as a knife in a public place is inherently risky and should be prohibited. The submission that he posed no danger to the public addresses risk but not reasonableness.

[15] In considering reasonableness we have not found assistance in consideration of the English cases referred to. They are of limited authority, of considerable age, and can readily be distinguished (two are cases of first instance, and all involve different technical arguments and legislative considerations). We consider that the excuse of attempted suicide is inconsistent with the purpose of the 1995 Act, which is to prevent the carrying of knives in a public place. There is nothing inherently inconsistent with an intent to self-harm on the one hand and posing a danger to the public on the other. In the present case the appellant was arrested on a public footpath next to a school, walking with his arms outstretched and a knife in his left hand. Whatever his underlying intention, there was no reasonable excuse for his possession of the knife in those circumstances and at that locus. Further, his intended destination was a nearby wooded area, a public place. We are not persuaded that carrying a

knife for the purposes of committing suicide in a public place is an inherently reasonable act. There is no authority for regarding intended suicide as a reasonable excuse in Scotland for carrying a knife.

[16] For the above reasons we answer the first question in the negative and the second question in the affirmative.