



SHERIFF APPEAL COURT

**[2026] SAC (Crim) 7
SAC/2025/273/AP**

Temporary Sheriff Principal E MacDonald
Appeal Sheriff C M Shead
Appeal Sheriff N McFadyen KC

OPINION

OF

TEMPORARY SHERIFF PRINCIPAL EILIDH MACDONALD

in

Bill of Suspension

by

STEVEN CLELLAND

Complainer

against

PROCURATOR FISCAL, HAMILTON

Respondent

Complainer: Deans; John Pryde & Co SSC (for Bruce the Lawyers, Motherwell)

Respondent: Cameron KC (sol adv), AD; the Crown Agent

27 February 2026

Introduction

[1] Following a proof in mitigation the sheriff determined, in terms of section 80(1) of the Sexual Offences Act 2003 (“the 2003 Act”), that there was a significant sexual aspect to the offence committed by the complainer in terms of paragraph 60 of Schedule 3 to the

2003 Act. On 16 July 2025, the sheriff sentenced the complainer to 10 months' imprisonment, backdated to 25 April 2025. As a consequence, the complainer was made subject to the notification requirements under Part 2 of the 2003 Act for 10 years.

[2] In this bill of suspension, the complainer challenges the sheriff's determination that there was a significant sexual aspect to this offence.

The complainer's offence

[3] The complainer had, prior to 16 March 2022, approached the daughter of WG, an 11-year-old girl, on numerous occasions and attempted to speak to her. At 6.15pm on 16 March 2022, the complainer was recognised by WG. WG approached him and asked him to stop speaking to children at the school as it was upsetting them. WG did not make any specific reference to his daughter. The complainer immediately shouted towards WG and AE "your 13-year-old whore of a daughter wants me to molest her" and "your whore of a daughter wants me to rape her". The complainer continued to repeat these phrases to the witnesses while pointing in the direction of the home address of WG's daughter, where she lived with her mother.

[4] Police witnesses were on mobile patrol in the area and WG flagged them down. Both WG and AE were distressed on speaking to the police. Police officers spoke to the complainer. He told them: "his daughter wants me to molest her, she came up to me, I was telling them to stay away". The complainer continued to use those phrases and made comments of a similar nature in the presence of the police and did not desist when requested to do so. The complainer was arrested, cautioned and charged and taken to the police station. While there, the complainer continued to repeat these phrases.

[5] The complaint was in the following terms:

“(001) on 16th March 2022 at Caledonian Road, Larkhall, you STEVEN WILLIAM CLELLAND did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did repeatedly shout and swear, utter offensive remarks and utter threats of sexual violence;

CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010.”

Procedural history

[6] The complainer appeared at a first diet on 17 March 2022 and pleaded not guilty. A trial diet was set for 9 August 2022. That trial diet was adjourned due to a Crown witness not being available.

[7] On 6 December 2022, the complainer’s solicitor moved for the trial to be adjourned for a psychiatric assessment to be made of the complainer. The purpose in obtaining the report was to confirm: (i) whether the complainer had sufficient capacity to participate effectively in a trial in terms of section 53F of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”); and (ii) whether the complainer had a special defence to the charge in terms of section 51A of the 1995 Act.

[8] Dr Bett, consultant psychiatrist, produced a report on 29 September 2023. She considered that the complainer suffered from schizophrenia. Notwithstanding that, she was of the opinion that he was fit to stand trial and that a special defence under section 51A of the 1995 Act was not available. Any evidence that he gave at trial would, however, be undoubtedly influenced by his fixed delusional beliefs. Moreover, the role played by his mental disorder in creating the situation where he responded in the manner complained of could not be underestimated.

[9] Dr Bett examined the complainer again. She assessed whether the complainer was fit for trial and able to plead a special defence, albeit on this occasion her instruction arose from a separate complaint that had been served on the complainer.

[10] Further to these examinations, Dr Bett produced a further report on 14 October 2024. She maintained her view that the complainer was fit to stand trial and could not rely upon the special defence. She remained of the opinion that he had schizophrenia, albeit that a diagnosis of delusional disorder may be more appropriate.

[11] On 30 October 2024, both complaints called in court. In respect of the complaint relating to the events on 16 March 2022, the complainer pleaded guilty to the charge. The Crown moved the court to determine that, under paragraph 60 of Schedule 3 to the 2003 Act, there was a significant sexual aspect to the complainer's behaviour on 16 March 2022. The sheriff continued the Crown's motion to 25 November 2024 pending receipt of a justice social work report and a restriction of liberty assessment.

[12] At the hearing on 25 November 2024, the sheriff determined it was necessary to fix a proof in mitigation to determine the Crown's motion. She ordered that a further psychiatric report be instructed to consider whether a compulsion order was appropriate together with provision of a supplementary justice social work report.

[13] The proof in mitigation began on 19 December 2024. The Crown led evidence from the police officers who had apprehended the complainer on 16 March 2022. The proof in mitigation continued on 20 June 2025. The complainer gave evidence.

The sheriff's decision

[14] The sheriff considered that the police officers led by the Crown were credible and reliable. Moreover, no objection was taken by the complainer to the terms of the Crown

narration which had been given at an earlier hearing. On the basis of that evidence, the sheriff accepted that the complainer had shouted the offensive and threatening comments and that the complainer believed at the time of the offence that the 11-year-old child wished to be sexually molested by him. However, she did not accept the complainer's evidence that the 11-year-old girl had asked the complainer to have sex with her. Of course, the child had no capacity to consent to sexual behaviour.

[15] Whether his belief arose from his mental disorder or otherwise, the sheriff considered that, by acting on that belief in committing an offence, including uttering threats of sexual violence, there was a significant sexual element to the offence.

Submissions for the complainer

[16] While the complainer had tendered a plea of guilty to uttering the threats concerned, the evidence led at the proof showed the complainer did not intend his comments to be threats to rape the child, albeit it was accepted the comments were criminally reckless.

[17] In determining whether there has been a significant sexual aspect to the offence, the offender's motivation in committing the offence required to be examined: *Sorrell v Procurator Fiscal, Greenock* [2020] SAC (Crim) 2 [13] - [14]. If the complainer genuinely believed that an 11-year-old child wished to be sexually molested by him, then his motivation for the offence was based on a delusion. There was no indication the complainer was motivated by sexual desire or gratification nor that he wished to have sexual relations with an 11-year-old child. Indeed, the contrary was true.

[18] The fact the complainer had a delusional belief did not mean the complainer had a significant underlying sexual disorder or deviance from which society required to be protected (which is suggested in *Hay v HM Advocate* [2012] HCJAC 28; 2014 JC 19 at [52] as

one approach to considering whether a sexual aspect is significant and is a test frequently applied in subsequent cases). There was no sexual purpose to the complainer's behaviour.

[19] It was noteworthy that the complainer had several convictions of a similar nature, including one with a racial aggravation. The complainer had repeatedly made erratic and criminally offensive remarks to others. That was linked to his mental disorder and alcohol and cocaine abuse. However, that did not mean the complainer obtained sexual gratification from making such remarks.

[20] The sheriff should not have certified the offence as being one involving a significant sexual aspect to the complainer's behaviour.

Submissions for the Crown

[21] The sheriff was entitled to find there was a significant sexual element to the offence. The question of whether conduct is significantly sexual is best left to the sentencer. The purpose of registration is to protect the public against a perceived danger: *Hay v HM Advocate* at [53]. Sentencers ought to keep a sense of proportion and use common sense in determining whether behaviour is significantly sexual: *McHugh v Harvie* [2015] HCJAC 86; 2015 SCCR 430 [18].

[22] There was a significant sexual element to the offence for three reasons. Firstly, the complainer shouted threats of sexual violence towards WG whilst pointing in the direction of the home of WG's daughter. Secondly, WG recognised the complainer as the individual who had been approaching his daughter. Thirdly, the complainer's motivation for his offence was concerning. The complainer genuinely believed an 11-year-old girl wished to rape and molest him. Such circumstances can be distinguished from those which arose in *Buchanan v Brown* [2024] SAC (Crim) 2; 2025 SC (SAC) 29. In *Buchanan*, a majority of the

Sheriff Appeal Court accepted that, despite repeated threats of rape being made towards a 19-year-old female police officer, the purpose of the offending was only to verbally abuse the officer and it was not done with any sexual purpose.

[23] The complainer's intoxication at the time of offending did not mean his conduct did not have a significant sexual aspect: *Sutherland v Harvie* [2017] HCJAC 22; 2017 JC 268; and *Sorrell v Procurator Fiscal, Greenock* [2020] SAC (Crim) 2. As for the complainer's mental health, Dr Bett was clear that, although the complainer suffered from schizophrenia, neither section 51A nor 53F of the Criminal Procedure (Scotland) Act 1995 applied. She opined that the complainer suffered from delusional beliefs. If that were the case, the complainer's conduct had a significant sexual element to it as he acted upon that delusion by making threats of a sexual nature involving a child. The bill should be refused.

Decision

The sheriff's reasons considered

[24] The core of the sheriff's reasoning is to be found at para [14] of her report. She accepted that the complainer believed that the child wanted to be sexually molested by him. Whether that belief arose from a mental disorder or otherwise the effect was the same. Proceeding on that basis she concluded that the sexual aspect of the offence was significant, because he had acted on his belief by committing an offence which included the uttering of threats of sexual violence. As the sheriff put it: "It meant that the threat of sexual violence was not simply an empty one but there was a real potential of danger posed by the complainer."

[25] In responding to the bill, the sheriff confirmed that she had followed the guidance in *Hay* and not had regard to the terms of the justice social work report nor the complainer's

previous convictions when making the determination. She seems to have accepted that the complainer's remarks were not made for the purpose of obtaining sexual gratification. The sheriff also recorded her view at para [19] that, if the complainer had suffered from a mental disorder, that would not exclude a determination under paragraph 60.

[26] One unusual aspect of this case is that neither of the psychiatrists who provided reports in this case was called to give evidence nor did the sheriff refer to their opinions in conducting her analysis of the competing submissions. Dr Bett's view was that the complainer's behaviour on this occasion had been prompted by a delusional belief about what the child had said to him. It seems that from the approach taken in para [14] the sheriff concluded that it was unnecessary to decide whether to accept Dr Bett's opinion or not. Neither party was able to assist us in understanding why the proof was so limited or the part, if any, that the psychiatric opinions played in the sheriff's determination.

[27] In the circumstances it is necessary to confine myself to considering whether the sheriff was entitled to come to the view which she did for the reasons which she gave. Having done so I am not satisfied that the reasons given are sufficient to support the sheriff's conclusion.

[28] Part of the difficulty may have related to the terms of the charge. When asked how the language used by the complainer might sensibly be viewed as threats the advocate depute submitted that, looking at the circumstances in the round, the words uttered could be construed as implied threats. That was not the basis on which the sheriff approached the matter. Had she followed that process of reasoning she would have said so.

[29] The sheriff's approach was to say that the circumstances of the offence involved the uttering of threats of sexual violence. In my opinion, despite the terms of the plea, that it is not the way the complainer's utterances can properly be viewed. As counsel submitted the

complainer felt aggrieved at what he believed had been said to him. The repellent way in which he chose to express that feeling constituted a contravention of section 38(1). In considering the circumstances it is instructive to bear in mind that the witnesses misconstrued what the complainer had said. In the sheriff's view that illustrated "the serious nature of the threat." I respectfully disagree.

[30] Ultimately, I do not consider that it can be inferred from the complainer's conduct alone that he posed a "real potential of danger". As I read the sheriff's report that inference was critical to her conclusion.

[31] I recognise that this was a difficult determination to make. Had the sheriff been required to conduct an analysis of the general risk which the complainer posed of committing further offences there were a number of sources of information available to her on which she could have relied to make that assessment. However, as the sheriff acknowledged, in seeking to be faithful to the guidance in *Hay* she had to make a judgment only on the basis of the behaviour which the complainer had exhibited on the occasion libelled.

Conclusion

[32] The words spoken have been characterised by the sheriff as "threats of sexual violence". This is not surprising given the terms of the libel, but as a matter of fact the words used, as quoted above, were not accompanied by any other significant criminal action and in reality, expressed no threat to carry out any act of sexual violence. Upon analysis it would seem that the words were an expression of the complainer's disturbing belief that a child wanted him to effect sexual violence on her but not an expression of his intent or desire to do anything. The words were highly abusive, rather than threatening.

[33] In accordance with *Hay* and subsequent observations in *McHugh*, motivation is a factor of importance. The words used by the complainer referred to sexual matters but were not an expression by the complainer that he had an intention to do anything sexual. His stated motivation to the police officer was, in effect, that he was trying to stop the child from saying the things he believed she was saying to him.

[34] As has been confirmed in *Hay* the purpose of certification in term of the 2003 Act (which is commonly known as being placed on the Sex Offender's Register) is protective. Its purpose is to protect the public against the perceived danger that sex offenders might pose. The complainer's behaviour in this case requires to be considered in the context of the purpose of registration. If there is a significant sexual aspect to the offending, certification is necessary.

[35] I accept the sheriff's general observation at para [19] referred to earlier. Those who suffer mental disorders and commit relevant offences may well be subject to a determination under paragraph 60. However, as the High Court of Justiciary emphasised in *Hay* at [51]: "The sentencer must make a judgement only on the accused's behaviour on the occasion libelled". Applying that approach I have reached the conclusion that the sheriff was not entitled to make the determination.

[36] When assessing whether there is a significant sexual aspect to the offending in this case, the court must consider if the words uttered were indicative of an underlying sexual disorder or deviance from which society is entitled to be protected. The court therefore must look at whether the behaviour, which in this case was the utterance of the unacceptable and alarming phrases, when looked at in the context of all the information before the court, might have indicated a sexual desire or interest of this sort.

[37] I find that the true meaning of the words was an expression of an aberrant belief. That belief was clearly false and contrary to reality. Taking into account all of the information before the court, I conclude that the words used: were not an expression of sexual desire or interest by the complainer; did not arise from a sexual deviance; and, therefore, the offending behaviour does not disclose that there was a significant sexual aspect to it which would warrant the additional sentencing measures of certification required to protect from the risk of sexual offending posed by the complainer. Instead, the information before the court indicates that these words, this expression of false belief, most likely arose from psychosis given the complainer's history of mental health problems. There was therefore not a significant sexual aspect to the offending.

[38] The bill should be passed and the determination made in terms of para [60] should be set aside.

Postscript

[39] My colleagues and I have had the opportunity to consider and take account of the opinion of this court in *Aslam & Laing v Procurator Fiscal, Glasgow* [2026] SAC (Crim) 4 in the preparation of our respective opinions in this bill.



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Temporary Sheriff Principal E MacDonald
Appeal Sheriff C M Shead
Appeal Sheriff N McFadyen KC

OPINION

OF

APPEAL SHERIFF CHRISTOPHER SHEAD

in

Bill of Suspension

by

STEVEN CLELLAND

Complainer

against

PROCURATOR FISCAL, HAMILTON

Respondent

Complainer: Deans; John Pryde & Co SSC (for Bruce the Lawyers, Motherwell)

Respondent: Cameron KC (sol adv), AD; the Crown Agent

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[40] I agree with Temporary Sheriff Principal MacDonald that the bill should be passed.

In particular I agree that the reasons given by the sheriff are not sufficient to support the making of the determination in terms of paragraph 60 to Schedule 3 to the 2003 Act.



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Temporary Sheriff Principal E MacDonald
Appeal Sheriff C M Shead
Appeal Sheriff N McFadyen KC

OPINION

OF

APPEAL SHERIFF NORMAN MCFADYEN KC

in

Bill of Suspension

by

STEVEN CLELLAND

Complainer

against

PROCURATOR FISCAL, HAMILTON

Respondent

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[41] I have had the advantage of reading the Opinion of Temporary Sheriff Principal MacDonald in draft and I am wholly content with how it sets out the background, submissions and law. I find that I do, however, have to dissent from the conclusion.

[42] Motivation is a factor of importance (*McHugh* at [8]) and a motivation to embarrass, humiliate and demean a victim (and presumably, as in this case, the father of the child who is the subject of the remarks) is not sufficient (*Sorrell* at [13]; *Sutherland* at [33]), but sentencers must “keep a sense of proportion and use their commonsense” (*Hay* at [52]).

[43] While a motivation towards sexual gratification may be very useful to a sentencer in determining whether there is a significant sexual aspect to behaviour, it is not essential to that determination if there is evidence (or an agreed narrative) on the basis of which the sentencer can find there is a significant underlying sexual disorder or deviance from which society required to be protected.

[44] Taking a common-sense approach to what occurred here, the complainer made highly sexualised remarks about an 11-year-old child, such as to make it apparent that he harboured (for whatever reasons) and was prepared to express to her father deviant beliefs as to her wish to engage in unlawful and violent sexual activity. Accepting that the evidence would indicate that he had no intention to indulge in such activity, the fact that he could express such aberrant and deviant beliefs to the child’s father seems sufficiently indicative of a significant underlying sexual disorder or deviance from which society requires to be protected such as fully to justify the sheriff’s certification.

[45] I would therefore refuse to pass the bill.