SHERIFF APPEAL COURT

[2022] SAC (Civ) 6
HAM-B669-19 & HAM-B670-19

Sheriff Principal D C W Pyle
Appeal Sheriff S Murphy
Appeal Sheriff H K Small

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL D C W PYLE

in

Appeals

by

AW

Appellant

against

PRINCIPAL REPORTER

Respondent

Appellant: Dewar, advocate; Hendry Law
Respondent: Carr, solicitor advocate; Anderson Strathern

25 October 2021

Introduction

[1] These are appeals from the determination of the summary sheriff in applications by the Principal Reporter that grounds of referral in terms of section 67(2)(b) and section 67(2)(c) of the Children's Hearings (Scotland) Act 2011 were established in respect of the

children, AA and OA. The mother of the children is SS and was represented at the hearing before the summary sheriff. The appellant is the father of OA.

[2] The questions posed in the stated cases, being identical in each of the two appeals, can be answered in a straightforward fashion, but the appeals offer the opportunity for this court to restate the correct approach to be taken in appeals of this nature, the law on the appropriateness or otherwise of naming the alleged perpetrator and the standard of proof where grounds of referral contain an allegation of criminal conduct.

Grounds of referral

[3] In respect of AA, the ground of referral was that in terms of section 67(2)(b), a schedule 1 offence had been committed in respect of her. Neither SS nor the appellant accepted the ground. The supporting facts were (following amendment at the bar):

> 1. AA was born on 2 February 2015 and normally resided with SS and her half-brother, OA.
>
> 2. The appellant is OA's father.
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> 3. On or around 17 January 2019, within the family home, the appellant assaulted AA by pinching her to the right ear and causing injury to her chin and chest by means unknown and as a result she sustained bruising to her ear, chin and chest, this being an offence involving bodily injury to a child under the age of 17 years, an offence mentioned in schedule 1(3) of the Criminal Procedure (Scotland) Act 1995.

SS and the appellant accepted only supporting facts 1 and 2.

[4] In respect of OA, the ground was that in terms of section 67(2)(c) he had, or was likely to have had, a close connection with a person who committed a schedule 1 offence.

Neither SS nor the appellant accepted the ground. The supporting facts were (following amendment at the bar):

1. OA was born on 23 January 2019 and normally resided in family with SS and his half-sister, AA.

2. SS had been involved in a relationship with the appellant since around March 2018.

3. Since around April 2018, the appellant had regularly stayed overnight within the family home and SS and the appellant intended to reside together as a family with AA and OA. (Although this ground was accepted by SS and the appellant, in her evidence SS said that the relationship had come to an end.)

4. On or around 17 January 2019, within the family home, the appellant assaulted AA by pinching her to the right ear and causing injury to her chin and chest by means unknown and as a result she sustained bruising to her ear, chin and chest, this being an offence involving bodily injury to a child under the age of 17 years, an offence mentioned in schedule 1(3) of the Criminal Procedure (Scotland) Act 1995.

SS and the appellant did not accept supporting fact 4.

[5] The sheriff's findings in fact included a finding that the assault had taken place and that it was committed by the appellant.

Evidence

[6] When AA was attending nursery on 17 January 2019, her key worker observed a purple mark on the tip of AA's ear. When asked what had happened, AA said "Dad". When asked if it was sore, she replied "Yes". The key worker said that AA appeared to be unfazed but that she stated that she wanted to tell someone. The following day the key

worker also observed a bruise about the size of a 10p coin under AA's chin. When asked what had happened, AA replied "Dad" and if it was sore replied "Yah". The key worker described AA as being "clingy" on both days. She was aware that there was a father figure in AA's life, whom she identified as being the appellant.

[7] A consultant paediatrician, Dr Shubhangi Shewale, prepared a child protection report after examining AA on 18 January 2019. She noted bruises in unusual places on AA's right ear, chest and underside of her chin. She was concerned about all three areas of bruising taking into account the history of the case and the background as brought to her attention by the police and the social work department. In her opinion, they were outwith those seen in normal accidental injury or, in particular, as a result of play with another child.

[8] The sister of SS lives next door. She confirmed that AA has called the appellant "Dad", but that she also called SS's father and brother the same. She was asked about SS having told the police that AA had hurt her chin when she had been playing with the sister's son and that she had told SS this. The sister said that this was untrue. Her view was that the bruises were caused when AA was at nursery.

[9] A police officer from the Family Protection Unit said that he interviewed SS on 10 May 2019. He had concerns regarding AA's family, being aware that in 2018 an incident of alleged domestic abuse was reported to the police. During the interview SS said that AA referred to other family members as "Dad" and that in her view AA's injuries occurred when she was at nursery. The appellant had been interviewed by the police on 19 January 2019 and said that on the previous day he had been working. Subsequent inquiries with his employer had confirmed that he had not been working on that day. Indeed, in written statements before the court the employer said that the appellant had spoken to him on 21 March 2019 about the police coming to see him the following day to ask if he had been

working on 17 or 18 January 2019. He had said to his employer, "I hope you told them I was working", to which the employer replied that he was not prepared to lie. During the interview on 10 May 2019, the appellant contradicted what he had said earlier, in that he said that he had in fact stayed with SS on the night of 18 January 2019 and that only he, SS and AA were present.

[10] In her evidence, SS said that she had come to the UK from Syria in March 2017. The appellant is also the father of her third child, born in March 2021. She and the appellant had separated at the end of 2019. They had no contact between January and May 2019 on the advice of the social work department. No interim child protection measures had been put in place by the children's hearing following a hearing in September 2019 and the appellant continued to have contact with the children. She stated that she had never seen the appellant mistreat or hurt any of her children. In 2018 she had contacted the police after she and the appellant had argued, stating that she wanted the police to ask the appellant to be away from her. She said that the appellant had visited her at night on 17 January 2019. She was positive that the appellant was not responsible for the bruising on AA. The bruise under her chin was caused by her falling from a sofa. The mark on the body or chest area was caused by her using a sponge to clean herself in the bath and scratching herself. SS had not seen the mark on AA's ear but thought that it might have been caused when she was fighting with her cousin who would sometimes pull her hair.

The Questions in the Stated Case

[11] The points of law specified in both applications for a stated case in terms of section 163(1) of the Act were as follows:

> "1. Did I err in law by my conclusion that there was *a sufficiency of evidence* [our italics], for proof to the relevant civil standard, that [the appellant] was the perpetrator of a Schedule 1 offence against [AA]?
>
> 2. In any event, ought I to have identified a perpetrator in the circumstances of these conjoined applications?"

These were repeated by the summary sheriff as the questions posed in the stated case.

[12] Much of the appellant's written note of argument was about the quality of the evidence and what weight to be attached to it rather than its sufficiency. When we reminded counsel for the appellant that these were not the points of law specified in these appeals, he continued to argue issues of quality and weight. He eventually accepted that the issues which the appellant wished to bring under review should have been more precisely focussed and that while there was a technical sufficiency of evidence this court should still consider quality and weight in order "to do justice".

[13] We do not agree. We discuss below the instruction of the Inner House on the correct approach to cases of this type, but for now we observe that it is critically important that in an application for a stated case the appellant states clearly what matters are sought to be brought under review. The Child Care and Maintenance Rules 1997 (SI 1997/291) at Rule 3.59 provide that in an application for a stated case, the appellant "shall specify the point of law upon which the appeal is to proceed…" Further, the rules of this court (SSI 2015/356) restrict the appeal to these matters, unless permission to raise other matters is given – Rule 30.3. It is not just a technical point that an appellate court should not stray outside the boundaries of the questions posed; the summary sheriff in preparing the case will inevitably and correctly limit it to the issues specified in the application. Counsel complained that the summary sheriff had not dealt with various matters, such as the evidence of SS and her sister about the likely cause of the injuries and the evidence that AA

called other family members as "Dad". Putting to one side the uncontradicted expert medical evidence about the likelihood of non-accidental injury, it is misconceived to blame the summary sheriff for not dealing with every adminicle of evidence when the only matter before her was one of sufficiency. The reality is that counsel was correct eventually to concede that there was a sufficiency. Indeed, it was not just "technical" (whatever that may mean); there was ample sufficiency when one takes into account the expert medical evidence, the evidence of the key worker and the eventual admission by the appellant to the police that on the relevant night he was alone with SS and AA in the family home. Added to that was the evidence of the employer of the attempt by the appellant to influence the statement the employer might make to the police about the appellant's days of work.

[14] On the second question posed, counsel accepted that because the ground of referral for OA was under section 67(2)(c) the summary sheriff was well entitled to name the perpetrator in that application. Given that the applications were heard together and on the same evidence (the summary sheriff inaccurately referring to them as being conjoined), it becomes academic whether the appellant should be named in AA's application.

[15] Accordingly, it follows – based on counsel's concessions – that these appeals have no merit and fall to be refused. However, as we have stated, the appeals raise other general matters upon which we will comment.

Referral Appeals

[16] In *S* v *Locality Reporter Manager* 2014 Fam LR 109, the Inner House made certain observations about the nature of referral appeals (particularly apposite for this appeal):

> "[6] At the heart of this appeal is the contention that the sheriff's reasons were inadequate and that their adequacy required to be judged so as to bear in mind how serious the matter was which was at stake for the appellant.

> [7] It should, however, be recognised that these proceedings were not a prosecution of the appellant, were not a permanence order application and were not adoption proceedings. The appellant was not at risk of conviction and sentence nor could any decision be taken within these proceedings which would sever the maternal link between her and DW. Rather, the sheriff's role was a limited one. The proceedings concerned only the issue of whether the circumstances of a very young child were such that they should be placed before the children's hearing for it to consider whether or not compulsory measures of care should be put in place for DW. Any such decision would have to be made with his welfare as their paramount consideration. If such measures were determined upon, the children's hearing would, in the usual way, then have the responsibility of regularly reviewing the child's whole circumstances including his relationship with his mother and any improvements in her circumstances insofar as relevant to him. The establishment of grounds of referral in any such case does not determine or pre-judge what will happen in relation to the care of the child in the future.
>
> [8] It is also important to recognise that the procedure for determining whether or not contested grounds of referral are established is expressly stated to be a summary one: Act of Sederunt (Child Care and Maintenance Rules) 1997, r.3.2."

The court continued:

> "[40] The summary nature of these proceedings underlines not only that a referral to the sheriff ought to be dealt with as expeditiously as possible, with the minimum of delay, but also that written reasons provided at the time of the decision and subsequently reflected in the stated case do not require to be an elaborate formalistic product of refined legal draftsmanship. They do need to contain a list of the findings in fact essential for the conclusions in law and an explanation of the reasons which have led the sheriff to conclude as she did regarding the facts and the law. But that does not require undue detail or for each adminicle of evidence to be pored over in the document. Parties are certainly entitled to be told why they have 'won' or 'lost' and there should be a sufficient account of the facts and reasoning to enable the appellate court to see whether any question of law arises, but that is all.
>
> [41] The sheriff's reasoning certainly meets that standard; in many respects, it exceeds it. Her reasons for deciding as she did are clearly explained and are understandable and the reader cannot, we consider, be left in any real doubt.
>
> [42] This is an example of the type of appeal which simply ought not to occur. The appellant's approach has been to trawl through the stated case, selecting adverse findings of fact, alleging that a different view could and therefore ought to have been taken of the evidence, asserting that anxious scrutiny was required and not employed, that more explanation could have been provided and that therefore the reasoning was not adequate or, baldly, that the overall decision was plainly wrong. It has been no more than a thinly disguised attempt at a rehearing of the case. That is not the function of the court in an appeal of this nature.

> [43] We do not suggest that there can never be a place in an appeal by stated case for a submission that the decision was plainly wrong but that can only ever be a shorthand way of pointing to an error of law which, rather than being that the judge has not considered or has misunderstood the relevant law is, for instance, constituted by a critical finding in fact having been made for which there was no basis in the evidence, or there has been a demonstrable failure to give any consideration to some important piece of evidence. The appellant does not suggest that there was such failure in the present case."

Similar points were made by Lord Osborne in *C* v *Miller* 2003 SLT 1379, paras [79] to [83]. In this appeal, counsel criticised the summary sheriff for not giving reasons for, apparently, not accepting the evidence of SS and her sister about where or in what circumstances the injuries to AA occurred – the failure to respond to and satisfactorily deal with that evidence was an error of law. The short answer to that is of course, as we have described above, that the weight and quality of the evidence was not specified as a point of law in the applications for a stated case. But even if it were, we regard this criticism as an example of the very thing the Inner House was concerned about. Looking at the stated case as a whole, it is clear that the sheriff readily dismissed this evidence in the face of the evidence of the expert witness (*JS and PS* v *Authority Reporter*, Inner House, unreported, 18 July 2001, paras [15] to [18]) and the whereabouts of the appellant on the night before the discovery of the injuries in the nursery. The evidence of SS and her sister are mere assertions without any other basis to support them. The key is "important evidence". (It could be otherwise described as "material evidence" or, as Lord Reed put it in *Henderson* v *Foxworth Investments Limited* 2014 SC (UKSC) 203, at p 220, "relevant evidence".) It is not the sheriff's role to explain in detail why she accepted or rejected every last piece of evidence; it is sufficient that, as the Inner House expressed it, the parties know why they won or lost and that no important evidence was ignored. (What Lord Reed described as "a demonstrable failure to consider relevant evidence" (op cit).) That is what the summary sheriff did in these appeals.

[17] Counsel submitted that the summary sheriff had fallen into error in that she proceeded on the basis of the evidence of the key worker about the replies given by AA – in particular her reply of "Dad" to the question about who did it. She appears to have taken AA's hearsay comments *pro veritate* and in doing so failed to address the binding approach articulated in *A* v *A* 2013 SLT 355, at 360, per Lady Dorrian, applying the dicta of the Lord President (Rodger) in *T* v *T* 2001 SC 337, at 349.

[18] In our opinion, even if this issue was properly before us by way of a question, counsel has misunderstood the authorities. *A* v *A* is a case about contact to a child by her father, but it is instructive in that the issue was not the direct evidence of the child but the evidence of her mother, her grandmother and the curator about what she said to them. Expert evidence was led on behalf of the father about the care which requires to be taken in interviewing children about allegations of sexual abuse. But ultimately the sheriff preferred the evidence of the adults. In supporting the sheriff, the Inner House did not say that expert evidence *must* be led in such cases. Nor is it a requirement of the law that the sheriff specifically address the extent to which the child could be regarded as reliable (para [23]). The proper approach is described thus (para [24]):

> "In T v T it was held that the statutory provisions regulating the admission of hearsay evidence in civil proceedings did not import any test of competency. The ultimate question for the court will be whether the hearsay statement relied upon is capable of being relied upon, whether it is trustworthy. As Lord Rodger put it in 2001 S.C., p.349; 2000 S.L.T., p.1450, para.38: 'If evidence of their statements is admitted, the judge or jury will again have to use their wisdom and common sense to decide whether the statements are trustworthy. The exercise is not *au fond* different. In carrying it out, in the case of young children in particular, the judge or jury will be able to draw not only on their own experience of listening to children in everyday life but also on any expert evidence which may be tendered in relation to the individual whose statement is in issue'."

[19] In any event, the summary sheriff gave cogent reasons for her decision to accept the evidence of the key worker about what the child said and its meaning. She noted that the

key worker was aware of a father figure in AA's life, that the appellant had on occasions attended the nursery with SS, that she had no reason to believe that there was another father or male figure in AA's life, apart from her grandfather whom AA would often talk about spending time with at the weekends, and that SS's sister gave evidence that AA referred to the appellant as "Dad". We might add that in eliciting the response from AA the key worker had asked an open question of "What happened?", rather than, say, "Who did it?" (*A* v *A*, para [24]).

Identification of perpetrator

[20] We have already recorded counsel's concession that the summary sheriff was entitled to name the appellant as the perpetrator of the assault in respect of OA's referral. But counsel submitted that in AA's referral it was inappropriate for a perpetrator to be named by the court (*S* v *Kennedy* 1987 SLT 667). Indeed, submitted counsel, it is not even necessary for the respondent to specify in the application the person who is alleged to have committed the offence (*McGregor* v *K* 1982 SLT 293). That is particularly so where, as here, there was evidence of a pool of possible perpetrators, namely members of SS's family. This was an "uncertain perpetrator case", which meant that the summary sheriff was not entitled to exonerate any member of the pool if by doing so she would necessarily identify the perpetrator by a process of elimination (*SCRA* v *EM*, Stirling Sheriff Court, unreported, 15 November 2019 (Sheriff Collins QC); *SCRA* v *RT & Ors*, Stirling Sheriff Court, unreported, 20 November 2019 (Sheriff Collins QC)).

[21] Even if this issue had been properly focussed in the applications for the stated case, we do not consider that it has any merit. *Kennedy* can be distinguished. In that case the Reporter had not specified the perpetrator in the grounds of referral or in the statement of

supporting facts. It is in that context that the opinions should be understood. Indeed, for Lord Dunpark (at p 671) his opinion was influenced by what he considered should be the correct approach on the standard of proof – balance of probabilities for an offence with no named perpetrator; beyond reasonable doubt where the latter is named. As we discuss below, that is not a correct statement of the law. Lord Robertson (at p 670) found it unnecessary to express an opinion as to whether it would be competent to name the perpetrator where his name is included in the statement of grounds. It is also of note, as we were advised by the solicitor advocate for the respondent, that at the time of *Kennedy* the legislation did not permit amendment of the grounds or supporting statement of facts.

[22] The solicitor advocate submitted that the correct approach was reflected in the opinion of Lord Malcolm in *City of Edinburgh Council* v *GD* 2019 SC 1, under reference to *In re S-B (Children) (Care Proceedings: Standard of Proof)* [2010] 1 AC 678 and *In re J (Children) (Care Proceedings: Threshold Criteria)* [2013] 1 AC 680. We find these cases of assistance but only in a limited way. *GD* is concerned with permanence orders, while the English cases are about a quite different care system.

[23] Sheriff Collins, *supra*, considered that to name the perpetrator was incompetent. That is not the language used by the court in *Kennedy* where the word "inappropriate" is used (albeit Lord Dunpark did consider it a competency matter – in the context of his view on the standard of proof), but the rationale for the decision was by way of construction of the legislation, the reasoning being that given that the sheriff's role was to find after proof whether a ground of referral is established and no more than that it was inappropriate for the sheriff to make findings in fact about any matter outwith that strictly limited role. Support for that approach was found in *McGregor* v *D* 1977 SLT 182 and *McGregor* v *K*. Although persuasive, none of these authorities is binding upon us, given that they relate to

the previous statutory child protection framework. In our opinion, in the modern context it is both competent and appropriate that in applications for grounds of referral in terms of section 67(2)(b) sheriffs identify the perpetrator of criminal conduct in referral proceedings, at least where he or she is named in the supporting facts. We have reached that conclusion for the following reasons:

1. If the alleged perpetrator is named in the statement of supporting facts, no issue of competency should arise given that the whole legislative purpose of supplying such a statement is to focus upon the alleged facts to be proved in support of the ground of referral;

2. In the modern context of the underlying paramountcy of the welfare of the child, not least through the development of human rights jurisprudence and the United Nations Convention, it is no longer appropriate to dismiss a finding as to the identity of a perpetrator because "a children's hearing might find it useful to have information on all kinds of issues" (*Kennedy*, LJ-C Ross, p 669) or because "it is possible to think of a wide field of investigation in such a case which might be claimed as being of possible assistance to the panel" (op cit, Lord Robertson, p 670). It is surely self-evident that in considering what orders to make the children's hearing will wish to weigh carefully in the balance that a family member residing with the child has been found by the sheriff to have physically abused the child. To put in another way, it is difficult to imagine any other information which would be more material for the children's hearing. As Baroness Hale put it in *In re B* [2009] 1 AC 11 (para [61]),

> "It is very much easier to decide upon a solution if the relative responsibility of the child's carers for the harm which she or another child has suffered can also be established".

In *In re S-B*, Baroness Hale also pointed out other benefits (p 692): promoting clarity in identifying future risks to the child and the strategies necessary to protect him from them, better enabling social workers to work with other family members and enabling the child to grow into adulthood knowing who was the perpetrator.

3. To identify a pool of perpetrators but then not to make a finding in fact on which member of that pool is the perpetrator is not a neutral act. It affects all members of the pool, no matter that the proceedings are private and no matter their guilt or innocence. And that in turn can be material when considering the welfare of the child, such as where the mother is left in the frame, with a background, as Lord Malcolm described it in *GD*, of risk-averse agencies (para [51]). Moreover, a finding that someone is a member of the pool concerning one child may much later become material in referral proceedings relating to a different child. It is all the more so where the children's hearing has to grapple with the possibility that the mother was the perpetrator (a member of the pool) or is, perhaps equally troubling, as Lord Wilson put it in *In re J* (p 736), a mother who has the "willingness to sacrifice the elementary interests of a child to be safe and free from injury on the altar of some adult relationship".

[24] We should emphasise that grounds of referral may still be proved where the sheriff is not satisfied that on the appropriate standard of proof the perpetrator has been identified. The fact that abuse has taken place by one member of a pool of perpetrators will be sufficient provided the ground has been properly framed – a point made by Baroness Hale (*In re S-B*, p 693), albeit in a different context.

[25] In the appeal of OA we have proceeded on the basis of counsel's concession, but in

the absence of a contradictor we see no reason in principle or practice to differentiate cases under section 67(2)(c) from those under section 67(2)(b). Indeed, we accept the solicitor advocate's submission that the identification of the perpetrator or a pool of perpetrators is in any event an essential fact for cases under section 67(2)(c).

Standard of Proof

[26] Counsel for the appellant accepted that the standard of proof in referral proceedings is the balance of probabilities, but he then went on to criticise the summary sheriff for the way she approached the quality and weight of the evidence under reference to Lord Dunpark's opinion in *Kennedy* and dicta of Lord Eassie in *B* v *Scottish Ministers* 2010 SC 472, at p 485. The solicitor advocate for the respondent considered that the opinion of this court in *CM* v *ME-M* [2019] SAC Civ 30; 2019 Fam LR 125 might be misunderstood, although he readily accepted that the decision was a correct one, albeit that the court was not referred to the most recent authority of the Inner House. He invited us to remind practitioners of the law.

[27] The law on the standard of proof in referral proceedings where criminal conduct is alleged is contained in *Scottish Ministers* v *Stirton and Anderson* 2014 SC 218 (para 117 *et seq*):

> "It was conceded, as it had to be, that the applicable standard of proof is the balance of probabilities… There is no intermediate or 'heightened civil standard' (*Mullan* v *Anderson; B* v *Scottish Ministers*). That much is clear. However, the reclaimers seek to qualify the position with reference to the quality of evidence required to meet the civil standard in the circumstances of this case. The quality of evidence necessary to meet the standard of proof, whether that is the civil or criminal standard, will depend on the circumstances of the case. Where the alleged facts are inherently improbable, it may be more difficult to prove that those facts are more probable than not. It does not follow, however, that proof of unlawful conduct will necessarily fall into the category of inherent improbability.
>
> [118] Despite the somewhat opaque *obiter dictum* of Lord Morison on the inherent unlikelihood that 'a normal person' will commit a serious crime (*Mullan* v *Anderson*,

p 842), proof of unlawful or criminal conduct in civil proceedings does not fall into any special category. There is no presumption that serious criminality is inherently improbable and there is no necessary connection between the seriousness of an allegation and its probability (*Re SB (Children) (Care Proceedings: Standard of Proof)*, p 686, citing *Re B (Children) (Care Proceedings: Standard of Proof)*, Lord Hoffman, para 15, Lady Hale, para 73). Thus:

> 'It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so.'

In all cases, the probability of the alleged conduct will depend on the whole circumstances of the case. Where the principal question is whether property was obtained through unlawful conduct, rather than whether the reclaimers themselves have committed any particular unlawful act on any particular occasion…, there is even less force in the argument that a higher degree of cogency, quality or quantity of evidence is required according to the gravity of the allegations (*Olupitan* v *Director of the Assets Recovery Agency*, Carnwath LJ, paras 22–24).

[119] The court has no difficulty with the Lord Ordinary's application (para 102) of the appropriate standard of proof. In particular, a requirement that 'there *must* be stronger evidence when the allegation is a serious one' (emphasis added) does not form part of the law for the reasons given. Such a *ratio* cannot be derived from the *dicta* of the Full Bench in *Mullan* v *Anderson*. That being so, it is sufficient to record that the judgment of the UK Supreme Court in *Re SB (Children) (Care Proceedings: Standard of Proof)* reflects the existing position in Scotland and, in so far as it addresses the application of the civil standard of proof, ought to be followed."

The criminal standard of proof applies only when the sheriff is considering grounds under s 67(2)(j), the "offence ground", where it is contended that the child has committed an offence: section 102 of the Act.

Disposal

[28] For the foregoing reasons, we shall answer question 1 in the negative and question 2 in the affirmative; refuse the appeals and remit to the summary sheriff with a direction that she direct the Principal Reporter to arrange a children's hearing on the established grounds

in terms of section 108(2) of the 2011 Act. The respondent does not seek expenses for these appeals.