



NEWS RELEASE

The Scottish Criminal Cases Review Commission ('the Commission') has referred the case of Carol Olwyn Kirk to the High Court of Justiciary.

In accordance with the Commission's statutory obligations, a statement of reasons for its decision has been sent to the High Court, the Lord Advocate and Crown Office. The Commission has no power under its founding statute to make copies of its statements of reasons available to the public.

On 11 May 2015, after a trial at Stirling JP Court, the applicant was found guilty of assault. On 13 November 2015, following a 6 month deferment, the court admonished her.

The case arises from a dispute between the applicant and her neighbour, both of whom own dogs. The complainer's dog and the applicant's had an altercation in an area behind their houses. The applicant struck the complainer's dog with a lead to try to separate the animals. The Crown alleged that the applicant struck the complainer repeatedly in the melee, causing injury to her hand. The Justice of the Peace considered that, although the first strike on the complainer may not have been intentional, later ones were. Accordingly, the JP convicted the applicant of assault.

In March 2017, the Commission referred the applicant's case to the High Court. It did so on the basis that the JP's account of her reasons for convicting the applicant made reference to a recording of the incident, which, she said, featured repeated cries from the complainer. The Commission obtained what it took to be the same recording. This did not include any screaming from the complainer. Standing the fact that the presence of screaming appeared to have been decisive to the justice's decision to convict, the Commission considered that there may have been a miscarriage of justice.

The court heard the appeal in August 2017. The pleadings in the case had not framed the issue around the discrepancy between the recording and the JP's account of it. There was, furthermore, no agreement between the parties regarding the provenance of the version that the Commission had obtained during the review. Accordingly, the court refused the appeal.

The Commission has decided, exceptionally, to refer the case to the court for a second time. The Commission considers that the provenance of the copy of the recording available to the Commission may be established with reference to other

available evidence. With this in mind, the Commission believes that the reasons for the first referral remain sound.

This release is for information purposes only and the content of this news release should not be treated as forming part of the Commission's statement of reasons.

Notes for Editors

The Scottish Criminal Cases Review Commission was established as an independent body on 1 April 1999 to review alleged miscarriages of justice in Scottish convictions and/or sentences. Under section 194 A to L of the Criminal Procedure (Scotland) Act 1995 (as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997) the Commission can refer a case to the High Court if it believes that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. Once a case is referred to the High Court by the Commission, it will proceed as a normal appeal.

The Commission operates with a Board of 8 Members, one of whom is the Chairperson, a Chief Executive, a Director of Corporate Services, a Head of Casework, 2 Senior Legal Officers, 6 Legal Officers and administrative support staff.

In terms of its disclosure policy, the Commission will disclose the fact that a case has been referred. However, as it operates under strict statutory non-disclosure provisions, the Commission will not disclose any further information about such cases.

For any further general information about the Commission please contact Mr Chris Reddick, Director of Corporate Services, SCCRC, 5th Floor, Portland House, 17 Renfield Street, Glasgow, Tel: 0141 270 7030, e-mail: creddick@sccrc.org.uk or visit the Commission's website at www.sccrc.org.uk