

## IN THE SUPREME COURT OF SCOTLAND

The Weird Sisters,	)	
Petitioners,	)	
v.	)	Crim. No. 2016-2
Kingdom of Scotland,	)	
Respondent.	)	

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After Macbeth was beheaded, King Malcolm decided that, for the good of the nation and to reassure the Scottish nobles, it was essential to prosecute the Three Witches for their part in the murder of King Duncan. Although Scotland had not yet passed a statute criminalizing the practice of witchcraft itself, King Malcolm was fearful that if the Witches were not punished, they and/or others would conspire to murder him in the future. He thus ordered the prosecutor to bring the Witches to trial under Scottish law for their role in Duncan's murder.<sup>1</sup>

On the basis of the investigation (including a review of the record of *Macbeth*), the Scottish Crown Office and Procurator Fiscal swore out a two-count indictment. Count I alleged that the Three Witches had used witchcraft to solicit the murder of Duncan and Count II charged them with aiding and abetting Macbeth in his commission of that crime. The prosecutor contended the Three Witches had a motive to create government chaos so that they would have greater freedom to practice their craft and they had the means to accomplish their goals as could be evidenced by their history of practicing witchcraft to harm others. There was testimony that they had previously stirred up winds to destroy crops and buildings and to sink ships. The prosecutor further argued that the Three Witches' potions, intoxicating fumes, and incantations had solicited and emboldened Macbeth to murder King Duncan from their first meeting with him, and that their actions had actually provided him with the will and intent that he did not otherwise possess to kill the King in furtherance of his own ambition to gain the throne for himself. The prosecutor pointed to evidence that the Witches had used their craft to boil up a mess of disgusting ingredients to conjure apparitions that offered various prophecies, all of which they intended to aid Macbeth in the commission of the murder of Duncan, and which in fact did aid him in the commission of that crime.

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<sup>1</sup> 11<sup>th</sup> century Scottish law has most of the constitutional protections and interpretations embodied in the jurisprudence of some place called the United States in the 21<sup>st</sup> century.

The Witches asserted two primary defenses. First, they contended that they are not witches because they are merely three “Weird Sisters” as they are consistently identified by all the witnesses to these events. They argued that the assumption by the prosecution that they are witches is a reflection of nothing more than popular superstition and a willingness to accuse any gathering of more than two women of being a coven of witches up to no good. As mere mortal citizens, they point out they have no special powers to have solicited anything or empowered anything. Second, they contended that even if they are deemed to be witches they cannot be found guilty of soliciting or aiding and abetting the murder of King Duncan because (a) they were merely practicing their religion and cannot be prosecuted for their actions in that the First Amendment protects their free exercise of their religion and (b) they lacked any intent to facilitate or contribute to the murder, and there is no evidence that they knew Macbeth would murder the King.

The prosecution argued that the Witches existed and had great powers and that the defendants had virtually conceded the practice of witchcraft. The prosecutor also argued vehemently that the First Amendment does not shield individuals from prosecution under generally applicable criminal laws even when their actions may have a sacramental character. The Witches countered that none of their actions were crimes because all they did was offer prophetic statements about future events, speak in riddles, create a charm from a variety of ingredients, conjure apparitions to offer other prophecies, and dance to cheer up Macbeth. In response to their final defense that they lacked the intent to solicit or aid and abet the murder, the prosecution argued that the testimony showed that the Witches clearly urged and empowered Macbeth to commit the crime of regicide, and that was sufficient to support their conviction.

The trial court rejected the Witches’ argument that the indictment should be dismissed, finding there was sufficient evidence that they were practicing witchcraft, a powerful force at the time of the events in question. This rejection was based on testimony that they had engaged in a variety of activities in addition to conspiring with Macbeth, including untying winds to fight against churches, stirring up the seas to sink ships, blowing down trees and crops, and toppling castles, palaces, and pyramids (Act IV, Sc. 1). The court held that their actions were not protected religious expression as a matter of law and that it was for a jury to determine whether they had the requisite criminal intent to solicit murder and aid and abet Macbeth in committing the crime. A jury found the Witches guilty and sentenced them to death, and the trial court denied their motion to overturn the verdict as unsupported by the evidence.

The Witches’ petitioned for review of their conviction and the Supreme Court accepted the petition to answer two questions:

- (1) Did the trial court err in submitting the case to the jury because the Weird Sisters’ conduct throughout consisted of protected acts of religious expression?
- (2) Did the trial court err in upholding the jury’s verdict because the evidence did not establish beyond a reasonable doubt that the Weird Sisters had ever solicited or aided and abetted Macbeth’s murder of King Duncan?