



Neutral Citation Number: [2024] EWHC 498 (Admin)

Case No: AC-2022-MAN-000051

CO/1315/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN MANCHESTER**

Wednesday, 6<sup>th</sup> March 2024

**Before:**

**FORDHAM J**

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**Between:**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Appellant**

**- and -**

**KELSEY CHRISTINA RIDINGS**

**Respondent**

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**Andrew Johnson** (instructed by CPS) for the **Appellant**  
**Richard Dawson** (instructed by Direct Access) for the **Respondent**

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Hearing date: 6.3.24

Judgment as delivered in open court at the hearing  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

## **FORDHAM J:**

### Introduction

1. This is an appeal by way of case stated from a decision of the Tameside Magistrates' Court back on 6 October 2021, by which the Magistrates acquitted the Respondent on a charge of driving with excess alcohol, contrary to section 5(1)(a) of the Road Traffic Act 1988. The legal limit was 35mg/100ml in a specimen of breath. I am grateful to both Counsel for assisting me with their focused submissions.
2. Where, as in this case, the issue arises whether a defendant has consumed alcohol after the alleged offence but before providing a specimen, sections 15(2) and (3) of the 1988 Act impose on the defendant a legal (persuasive) burden of proof, to the civil standard: see R v Drummond [2002] EWCA Crim 527 [2002] 2 Cr App R 25.
3. The Case Stated is dated 8 April 2022. Its anatomy is that it describes: (a) the charge; (b) the history of the proceedings; (c) "findings of fact" (§§4-5 below); (d) "evidence relevant to the contentious finding" (§§6-7 below); (e) contentions of the parties (§§8-9 below); (f) law to which the Magistrates were referred (§10 below); (g) "conclusions" (§11 below); (h) outcome; and (i) two questions for the High Court.

### Facts

4. The "findings of fact" section of the Stated Case records that the Magistrates found the following as facts. (1) On 6 May 2021 the Respondent was involved in a road traffic collision with Carl Kidd. (2) At the scene the Respondent and Carl Kidd had a dispute about settling the matter through car insurance rather than in cash. (3) Carl Kidd's pregnant partner was a passenger in his vehicle and the Respondent was carrying 3 children in hers. (4) The Respondent drove off from the scene of the collision after giving Carl Kidd her name and insurance provider. (5) The Respondent drove to Paige Azad's home. (6) On arrival, Paige Azad gave the Respondent two large vodka and cokes, which the Respondent consumed. (7) A male friend of the Respondent then drove her vehicle to her home address. (8) Following arrest, the Respondent later gave a specimen of breath of 82mg/100ml at the police station.
5. Conspicuously, the "findings of fact" section also records that the Magistrates found the following two facts. (9) The Respondent was not over the limit at the time of the traffic accident. (10) The Respondent was not over the limit prior to consuming alcohol at the home of Paige Azad.

### Evidence

6. The section entitled "evidence related to the contentious finding" describes the following. There was this evidence as to police involvement. The police had responded at 18:00 hours to a report of a vehicle failing to stop following a collision involving two vehicles. They arrived at the scene shortly after the Respondent had left. The police then attended the Respondent's home address but neither she nor her vehicle were there. At 18:17 the Respondent arrived at her home address in the vehicle, being driven by the male friend. A police officer then spoke to her and she accepted having been driving the vehicle at the time of the collision. She was asked directly whether she had had a drink and she replied "no". This was captured on body worn video. The

Respondent appeared drunk to officers and provided a first specimen of breath recording 124mg/100ml. The lower specimen of breath was provided at the police station at 19:59 and was the 82mg/100ml. At interview at the police station, the Respondent said she had been driving to a shop with her two sons and niece when she had been involved in a collision. She said she had swapped details and asked the other driver not to claim through his insurance company and that she would pay for the damage caused. She said he had become aggressive demanding more money than she initially offered. She said she had then met a friend, who she refused to name, and they had both stood by the side of her car during which time she drank two vodka and cokes. She said another friend came to drive her home because she was shaken up and had been drinking and so did not want to drive. The post-incident consumption of alcohol was first raised at the police station, during the breath test procedure, and then repeated in the interview. That was the police evidence.

7. Then there was this further evidence. First, evidence from Carl Kidd. He said that the Respondent appeared intoxicated when speaking with her at the scene of the accident; that he observed that she appeared unsteady on her feet and that her speech was slurred. Secondly, evidence from the Respondent's stepfather Alan Crooks. He gave evidence that the Respondent had visited him prior to the accident, at about 17:15 to 17:30. He said she did not appear drunk to him, that he could not smell alcohol on her and that he did not think she had been under the influence of alcohol. Thirdly, evidence from Paige Azad. She said she had brought the Respondent two large drinks of vodka and coke which the Respondent had "necked". Paige Azad also gave evidence that there had been a history of domestic violence involving Carl Kidd. Fourthly, there was evidence from the Respondent herself. She said that at the time of the collision she was not under the influence of alcohol. She said Carl Kidd was a friend of her ex-partner. She said she was aware of a history of domestic violence involving Carl Kidd. She said that, for that reason, she had panicked and driven off. She said she had been given two large drinks of vodka and coke by Paige Azad, before the male friend had driven her and the children home.

### Contentions

8. In the contentions of the parties section the Case Stated records the following key submissions. So far as concerns the prosecution's submissions these were as follows. At the time of the collision the Respondent was over the legal limit. She had appeared intoxicated when speaking to Carl Kidd at the scene. There was a statutory presumption in section 15(2) of the 1988 Act. The defence had failed to rebut it on the balance of probabilities. There was a lack of medical or scientific evidence to explain the excess alcohol in the specimen of breath.
9. So far as concerns the defence submissions, these were as follows. At the time of the collision, and while driving the vehicle, the proportion of alcohol in the Respondent's breath did not exceed the prescribed limit. Reliance was placed on the evidence of Mr Crooks. The Respondent had explained that at the scene she had panicked and felt intimidated. Reliance was placed on her evidence and that of Paige Azad. Having arrived at Paige Azad's house the Respondent had necked two vodka and cokes brought for her by Paige Azad, and had then been driven home by the male friend. Again, reliance was placed on the evidence of the Respondent and Paige Azad. But for the Respondent having drunk the two vodka cokes at Paige Azad's home, she would not have been over the legal limit.

## Law

10. In the section of the Stated Case setting out the law to which the Magistrates were referred, the Magistrates record the following. They were referred to the statutory defence of post-incident consumption in section 15(3) of the 1988 Act and the statutory presumption in section 15(2). They were referred to the caselaw of DPP v Dukolli [2009] EWHC 3097 (Admin) for this proposition: unless it is obvious to a layperson that the post-offence consumption of alcohol explained the excess, the defendant must call medical or scientific evidence to prove that they would not otherwise have been over the prescribed limit. Finally, the Magistrates were referred to the good character direction, in regards to the credibility of the Respondent's evidence, and that being a person of good character may mean they have a lesser propensity to have committed the crime.

## Conclusions

11. The "conclusions" section of the Case Stated is expressed as setting out the Magistrates' "opinion". I interpose that it is common ground that these are in the nature of findings: the word "found" is used. Moreover, the conclusion that the Respondent was not guilty is later expressed as "consequently" on this "opinion" section. The conclusions recorded are as follows. (i) First, that the prosecution did not prove the case beyond reasonable doubt. (ii) Secondly, that "there was insufficient evidence to prove, beyond reasonable doubt, that the [Respondent] was over the limit at the time of the offence or prior to the consumption of alcohol at the home of Paige Azad". (iii) Thirdly, that Carl Kidd's evidence was clear and credible. (iv) Fourthly, that the Respondent's evidence was confused, emotional and at times misleading. (v) Fifthly, that Alan Crooks had provided a brief statement which did not add any weight to the overall case. (vi) Sixthly, that Paige Azad was not credible.

## Question 1 (First Ground of Appeal)

12. The Magistrates first question, stated for the High Court, is this: "Did we misdirect ourselves as to the correct legal test to be applied in this case with respect to the presumption that applies (section 15(2) of the 1988 Act) and the reverse burden of proof in such cases that requires the defendant to rebut the presumption on the balance of probabilities (section 15(3) of the 1988 Act)?"
13. The Appellant's corresponding First Ground of Appeal is that the Magistrates were wrong in law to acquit the Respondent, as they misdirected themselves in law as to the correct approach to the displacement of the statutory assumption contained in section 15(3), incorrectly concluding that the prosecution bore the burden of proving to the criminal standard that the Respondent had not consumed alcohol after she had ceased to drive.

## Acknowledgment

14. It is to be noted that the Magistrates included within the section of the Stated Case on "the history of the proceedings" (§3(b) above), this ("the Acknowledgment"): "The court is aware that it was in error in terms of the standard and burden of proof applied".

The Respondent's Case on Question 1

15. Mr Dawson for the Respondent submits as follows. As a 'primary position', the answer to Question 1 is "no". But, as a 'fallback position', there is a lack of clarity arising from the Acknowledgment, when read alongside the Magistrates recording of the contentions of the parties and of the law to which the Magistrates were referred, and this Court should send back the Stated Case for clarification from the Magistrates.
16. The essence of Mr Dawson's 'primary position', as I see it, is as follows. The Stated Case, read fairly and as a whole, can and should be seen to have involved no material error of law. Importantly, the Magistrates expressly record that they were referred to the statutory presumption in section 15(2) and to section 15(3). Importantly, they expressly record the prosecution's submissions, that the defence had failed to rebut the statutory presumption on the balance of probabilities. The Magistrates plainly had in mind the correct legal principles and approach. Having clearly had the correct legal position in mind, there is no proper basis for this Court treating the Magistrates as having then inexplicably rejected those legal principles and having reverted instead to the traditional criminal burden and standard of proof, on the question of the defence of post-incident alcohol consumption. Importantly, the Magistrates expressly record positive findings of fact. They found – as facts – that the Respondent was not over the limit at the time of the accident, and that she was not over the limit prior to consuming alcohol at Paige Azad's home. These are clear positive findings and, given the recognised legal principle as to the burden and standard of proof, based on the statutory scheme, the Magistrates were saying that the defence had satisfied that standard and discharged that onus. Linked to all of this, the Magistrates also found as a fact that, on arrival at Paige Azad's home, Paige Azad gave the Respondent two large vodka and cokes, which the Respondent then consumed. On the basis of all of the clearly articulated findings of fact, and the recording of the correct legal position, there was no misdirection or material misdirection as to the burden or the standard of proof. Having determined that the Respondent had satisfied the persuasive burden, on the balance of probabilities, the Magistrates determined that she had made out the statutory defence and had rebutted the statutory assumption. The further findings in the "conclusions" were an additional step, considering the case in the round. The Magistrates were there saying – using typical 'default position' language – that there was no other evidence called by the prosecution to prove the prosecution case. Even if that was a subsequent mistake or misdirection, it was immaterial and was only in an attempt to do full justice to the case, in the round. The key point is that the findings of fact had already been made, by reference to the applicable burden and standard. The appeal should be dismissed.
17. Mr Dawson's 'fallback position' is as follows. The Stated Case, if open to different interpretations – as is the very least that can be said if the primary position is not accepted – is very unsatisfactory. The prosecution could have asked for clarification at any time. The Respondent was unrepresented in this appeal until two weeks ago. The Magistrates' Acknowledgment says they think they were wrong in law on the burden and standard of proof. But this is not explained. It conflicts with the law and the submissions which they record. They do not say that they rejected or decided not to apply that law or rejected those submissions. In light of the way the contentions of the parties and the law are described, there is at least a question of how to reconcile what the Stated Case says, and that question should lead to sending back the Stated Case for the position to be clarified.

## Discussion

18. I have been unable to accept those submissions. I agree with the submissions of Mr Johnson for the Appellant. In my judgment, the Magistrates made a material error of law as to the onus and standard of proof. I entirely accept that it is necessary to consider the contents of the Stated Case straightforwardly, fairly, and reading it overall and in the round. I also accept that the position needs to be tested by putting the Acknowledgment to one side, and examining the reasoning, to see what the approach was. The key points are these:
19. First, it is right that the Magistrates discussed the relevant law, and they record the contentions about the relevant law. It will often be the case that a decision-maker who identifies the legally correct approach will be seen – or even treated or inferred – to have applied that approach when then making findings and reaching conclusions. But it is possible to state a test or principle and then go on to fail to apply it.
20. Secondly, this was a case where the issue was whether post-incident alcohol consumption accounted for the excess alcohol found in the test. It was common ground that the test showed excess alcohol and, as the Magistrates recorded, the test result was not challenged. It was also common ground that the Respondent was driving. She had been driving. She was found to have excess alcohol in her system. The only issue was whether this was because of post-incident consumption.
21. Thirdly, having set out the evidence, the contentions and the law, the Magistrates record the “conclusions” which they reached (see §11 above). There the Magistrates state, in terms, that the prosecution did not prove the case beyond reasonable doubt. They state, in terms, that “there was insufficient evidence to prove beyond reasonable doubt that the [Respondent] was over the limit at the time of the offence or prior to the consumption of alcohol at the home of Paige Azad”. This reasoning can mean only one thing. The Respondent was being given the benefit of the doubt. The Magistrates were not satisfied so that they were sure. The finding of not guilty and the dismissal of the case against the Respondent were arrived at “consequently” on those conclusions. That, in and of itself, establishes a material misdirection in law.
22. Fourthly, this is not inconsistent with making findings that the Respondent was not over the limit at the time of the accident, and prior to consuming alcohol at Paige Azad’s house, in the “findings of fact” section of the Stated Case (§5 above). These findings beg this question: what burden and standard of proof was being identified and applied, to arrive at them? It is common ground that the reasoned logic of the law – on a question of fact – is that, once the relevant rule as to the burden and standard of proof is identified and applied, a binary answer is possible. An explanation is given by Lord Hoffmann in Re B [2008] UKHL 35 [2009] 1 AC 11 at §2. You can ask: ‘was she over the limit when driving, yes or no?’ You can then say: ‘the prosecution has not, by evidence, proved this beyond reasonable doubt’. And you can then say: ‘I find “as a fact” that the answer is no’. I cannot accept Mr Dawson’s submission that this was not what happened in this case, or that it is unclear. Reading the Case Stated fairly and as a whole, it is clearly what did happen. The favourable findings of fact, near the start of the Stated Case, do not – in and of themselves – show that the correct defence burden and civil standard were applied. Nor do they show a legally correct approach, when linked to the discussion of law and submissions. The direct link is to the, directly relevant and unambiguous, “conclusions” containing the misdirection. The express

findings fit with the express conclusions. They flow with, and are a function of, the approach taken in the conclusions.

23. It is important not to be distracted by the sequence in which the Magistrates presented the Stated Case (§3 above). The “findings of fact” are set out near the start. I asked Counsel about this sequencing. It faithfully reflects a commended “example of a well-drafted case”, in Appendix 1 to the Justices Clerks’ Society’s Case Stated Guide (March 2020), to which Mr Johnson invited my attention. As I have explained, it is clear that the key “findings of fact” – including on the issue at the heart of the case – fit with, and are a product of, the express “conclusions” about absence of proof and insufficiency of evidence to prove beyond reasonable doubt. That fit is what would be expected. Putting the “findings of fact” early in the document does not change this natural and logical fit. The approach taken is clear. But it is also, clearly, wrong in law.
24. Fifthly, the idea that there was a final stage of evaluation of the rest of the evidence – using the default position of the conventional burden and standard and proof – does not work in this case. The only issue was post-incident consumption accounting for the excess. That was the issue on which there was the defence legal burden and civil standard. Once that was decided, there was no other function or question to address. Once that defence succeeded, there would be nothing else to test or check. The “conclusions”, moreover, are specific. I repeat, one specific conclusion was this: that there was insufficient evidence to prove beyond reasonable doubt that the Respondent was over the limit at the time of the offence or prior to consuming alcohol at the home of Paige Azad. This, as I have said, is clear and unambiguous, but legally erroneous as an approach.
25. Sixthly, the picture is reinforced by several other features. There is the fact that nowhere do the Magistrates describe themselves as having been satisfied by the Respondent and by the evidence adduced by her that, on the balance of probabilities, the excess alcohol was attributable to post-driving consumption. Then there are the magistrates’ conclusions about the evidence. There are the negative characterisations of the Respondent’s evidence and Paige Azad’s evidence; the conclusion that Alan Crooks’s evidence really added nothing. These were the witnesses whose evidence was being relied on by the Respondent. On the other hand, the Magistrates found Carl Kidd’s evidence to be clear and credible. Read fairly and as a whole, the Magistrates reasoning is consistent – and only consistent – with their not having been satisfied to the criminal standard by the prosecution, on the issue in the case. It is not consistent with having been satisfied to the civil standard by the defence. The final reinforcement is the Acknowledgment. My reading of the Magistrates’ approach is known to reflect their own understanding. It is recognised, in preparing the Stated Case in the light of the Appellant’s intended appeal, in saying that “the court is aware that it was in error in terms of the standard and burden of proof applied”. This reflects the substance of what the Magistrates said and did.
26. Nor am I able to accept Mr Dawson’s ‘fallback position’, that it is necessary or appropriate to send the Stated Case back to the Magistrates for clarification. It is true that the Magistrates’ “conclusions” involve an approach which conflicts with the law to which they were referred. But that conflict is the error of law. The conclusions are clear. They are also clearly erroneous. The law is clear, and is clearly reflected, but the approach taken departed from it. The Acknowledgment does not introduce a lack of

clarity requiring further enquiry. It simply matches the error of approach to be found in the reasoning.

### Conclusion

27. The answer to Question 1 is “yes”. The First Ground of Appeal succeeds. That is the end of the case.

### Question 2 (Second Ground of Appeal)

28. The second question stated by the Magistrates for this Court was this: “Bearing in mind our findings on the evidence, were we correct to dismiss the information?” As both Counsel recognised, this question would need some reformulation, replacing “correct” with “entitled”, because a case stated appeal requires an “error” of “law” – which includes any material public law error – and so this must be how the question was to be understood. I record that the corresponding Second Ground of Appeal frames the second issue by reference to the principle governing the adducing of expert evidence: Dukolli. The Ground of Appeal is this: in view of the findings made by the Magistrates as to the witnesses who gave evidence, no reasonable tribunal could have concluded that it was more likely than not that the alleged alcohol taken after the driving explained the excess, in the absence of expert evidence to that effect. In other words, on the facts found by the Magistrates the burden placed on the Respondent within section 15(3) could only effectively be discharged with the assistance of expert evidence. At the heart of this issue was an argument about the Dukolli principle, which the Magistrates recorded as to the law (§10 above) and as reflected among the contentions of the parties (§8 above).
29. Three things were common ground between Mr Johnson and Mr Dawson. (1) First, if Question 1 were answered “yes” and the First Ground of Appeal succeeded, the appeal would have succeeded. (2) Secondly, that – even if Question 2 were answered “no” and the second Ground of Appeal also succeeded – the outcome would be quashing and remittal for a retrial. In Dukolli, the Divisional Court allowed the appeal and directed a conviction. Here, the Notice of Appeal restricted the remedy sought to the setting aside of the order and the ordering of a new trial; and the Grounds of Appeal recorded that the acquittal should be quashed and the case remitted for retrial. (3) Thirdly, that if quashing and remittal for a retrial is justified by reference to Question 1 and the First Ground of Appeal, it is unnecessary and indeed inappropriate for this Court to get into Question 2 and the second Ground of Appeal. Pausing there, I think one of the features of treating Question 2 as a ‘freestanding’ issue, would have been this. I would – artificially – have treated the Magistrates’ findings of fact (§5 above) as if they had been reached by adopting the correct burden and standard of proof, putting to one side that I have decided that the Magistrates materially erred in law on those points. Given where I have reached on Question 1 and the First Ground of Appeal, Counsel’s joint invitation was to leave it there. I accede to that invitation.

### Order

30. My Order is: (1) The appeal is allowed on the First Ground of Appeal and the answer to Question 1 is “yes” (in light of which the Court does not answer Question 2 or address the Second Ground of Appeal). (2) The decision of the justices sitting at Tameside Magistrates’ Court on 6 October 2021, to acquit the Respondent of the offence of



driving a motor vehicle with excess alcohol, contrary to section 5(1)(a) of the Road Traffic Act 1988, is quashed. (3) The case is remitted for a re-trial before a differently-constituted bench.

### Costs

31. In relation to costs, it is common ground that the criminal costs regime applies, there being no exceptional circumstances (Murphy v Media Protection Services Ltd [2012] EWHC 529 (Admin)). In the light of Dagenham LBC v Argos [2022] EWHC 2466 (Admin), Mr Johnson makes no application for costs, and says the correct position in this case is to say nothing about costs in this Court so that, if there were a subsequent conviction following a retrial, the magistrates court could consider whether these costs should be included in any costs order made by that court. Mr Dawson invited me to say “no order as to costs”, so as to remove that possibility. I am satisfied that the right course is that the question should simply be left to the magistrates’ court to consider – should there be a conviction and should it prove appropriate – and that observations from this Court are unnecessary.

6.3.24