



Neutral Citation Number: [2024] EWHC 1763 (Admin)

Case No: AC-2023-LDS-000279

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

Tuesday, 9<sup>th</sup> July 2024

**Before:**  
**FORDHAM J**

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**Between:**  
**DIRECTOR OF PUBLIC PROSECUTIONS** **Appellant**  
**- and -**  
**STEVEN WARD** **Respondent**  
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**Dominic Connolly** (instructed by CPS) for the **Appellant**  
**Richard Dawson** (instructed by DWF Law LLP) for the **Respondent**

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Hearing date: 25.6.24  
Draft judgment: 1.7.24  
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**Approved Judgment**

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FORDHAM J

## **FORDHAM J:**

### Introduction

1. This is an appeal by way of case stated by the Justices for the County of Durham and Darlington in respect of their adjudication in this case as a Magistrates' Court sitting at Peterlee on 5 December 2022. On 2 August 2022 a written charge had been sent to the Respondent in relation to an allegation of his having driven his Toyota Hiace van without due care and attention on 26 May 2022 on South View Spennymore, contrary to section 3 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. The Respondent pleaded not guilty at a hearing on 18 August 2022. At the trial on 5 December 2022 the Magistrates entered a verdict of not guilty, upholding a plea of no case to answer at the end of the prosecution evidence.
2. Two questions are stated by the Magistrates for the opinion of the High Court: (1) Was the court right to find that there was no case to answer at the trial of this matter? (2) Was the Court's finding of fact at the close of the prosecution case one which no reasonable tribunal could have reached? The "finding of fact" referred to in question (2) is set out as the finding that "there was no case to answer in relation to the allegation that the Respondent was driving without due care and attention" because "the evidence presented is insufficient to support that charge". I am grateful to both Counsel for their focused assistance in addressing the two questions.
3. The Stated Case records the following. At approximately 4pm on 26 May 2022 the Respondent was driving the van on South View, which is a public road. He was in the opposing (right-hand) carriageway due to parked vehicles in his carriageway. A group of males were in the road, and someone kicks a football to one of them who changes course in the road. The Respondent's vehicle struck one male who was still in the carriageway causing him to fall and require medical intervention.
4. The collision was captured on CCTV. At the trial the Defence expert, Mr Peter Davey assisted the Magistrates by playing the footage for the Court in its original format; "slowed down to real time"; slowed down to slower than real time; and in various zoomed in/out formats. A link to the CCTV is annexed to the Stated Case. Also annexed is a summary of the Respondent's taped police interview, which took place on 7 June 2022. By attaching the CCTV, it becomes part of the Stated Case. That was common ground. It was explained in DPP v Young [2018] EWHC 3616 (Admin) at §§2, 16. The CCTV files were helpfully adapted, to enable me to see what the Magistrates were shown by Mr Davey, including "in real time". I was asked to watch the CCTV and have done so.
5. The Magistrates record that the prosecution contended as follows: that the Respondent could have taken more steps to prevent the road traffic collision with the male pedestrian, specifically in relation to driving more slowly, giving the pedestrians plenty of space and/or sounding his horn; that the Respondent failed to take appropriate evasive action; and his driving therefore fell below the standard that could be expected of a competent and careful driver (as to which, see s.3ZA(2) of the 1988 Act). The Magistrates record that the defence contended as follows: that the evidence, such as had been submitted at that stage, was insufficient for any tribunal, properly directed, to convict.

Law

6. I start with the Magistrates' function. Rule 24.3(3)(d) of the Criminal Procedure Rules provides that at the conclusion of the prosecution case, the criminal court "may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict".
7. The Magistrates record that they were referred to R v Galbraith [1981] 1 WLR 1039 which they describe as "envisaging two possible situations (i) where there is no evidence of a defendant committing the offence alleged or (ii) where there is some evidence but it is evidence which may be weak, vague or inconsistent with other evidence and, for those reasons, insufficient for any tribunal, properly directed, to convict". Mr Dawson tells me, and I accept, that the Magistrates were taken through Galbraith in more detail – by him and by the clerk to the Magistrates – including to its references to evidence "of a tenuous character"; to "the prosecution evidence taken at its highest"; and to "one possible view of the facts".
8. The Galbraith test was expressed in the context of a crown court trial, where there is a division of labour between judge and jury. The judge decides whether there is a 'case to answer', by reference to whether there is a possible view of the evidence – taken at its highest – on which a properly-directed jury could properly convict. In the context of summary trial before magistrates, the magistrates have to apply the 'case to answer' test, knowing that they discharge the function of a jury if the case proceeds. The question becomes whether the evidence, taken at its highest, is such that on one view of it a reasonable bench, properly directed, could properly convict (Young §18).
9. As Mr Connolly and Mr Dawson agree, this is not the same question as magistrates asking themselves whether – if there were now no more evidence in the case – they think they would acquit. The discipline is to be thinking – at the half-time stage – about the evidence at its highest and possible views of the evidence. The fact-finding stage has not yet been reached. This is a subtle, but important, distinction. The Galbraith test is about there being a 'case to answer'. Archbold Magistrates' Courts Criminal Practice 2024 at §11-14 says it requires "a determination of law separate from a finding of guilt"; which means there could be "a decision to acquit where, after finding a case to answer, the defendant called no evidence". In Young (at §19) it was emphasised that the question whether, at the conclusion of all the evidence, the Magistrates would have convicted is a separate matter.
10. I turn to the High Court's function. An appeal by case stated is not an appeal on the merits. The High Court's function is limited to whether the Magistrates' decision was "wrong in law or is in excess of jurisdiction": see s.111(1) of the Magistrates' Courts Act 1980. That engages public law principles, including a reasonableness standard for primary decision-makers evaluating evidence. Mr Connolly and Mr Dawson agree – notwithstanding the idea of "a determination of law" – I am not exercising a hard-edged substitutionary jurisdiction. Mine is a soft reasonableness review function. As Mr Dawson emphasises, Parliament has chosen not to confer merits-appeal rights on prosecutors in magistrates' court cases. He rightly cautions against expansion of the concept of "wrong in law".

## The Magistrates' Reasons

11. The Stated Case clearly and candidly sets out the Magistrates' reasoning, as follows:

*We were of the opinion that:*

*[a] The Crown's evidence was somewhat minimal and had there been oral witness evidence called from anyone present at the time this may have assisted us a great deal in knowing the circumstances which led up to the collision. Specifically, we would have been assisted by hearing from anyone from the group of young men present or anyone who witnessed their behaviour or the van driving immediately prior to the accident.*

*[b] Whilst there was some evidence in support of the charge that which was presented was weak and insufficient to continue with the case as a tribunal, properly directed, could not convict. We reached this conclusion based on the agreed facts which we were told that the Respondent's vehicle was in a roadworthy condition and there was no suggestion that he was under the influence of drink or drugs and the CCTV footage which we viewed a number of times.*

*[c] The CCTV footage is of relatively poor quality shows the Respondent's vehicle was travelling at a speed which appeared to be appropriate for the area, the road conditions and the weather which was fine and clear. The court was asked to read the defence expert report prior to the start of the trial. Whilst he had not yet been challenged as to the contents of the report the court made a determination as to the speed of the vehicle as shown on the CCTV therefore the speed the defence expert considered the vehicle to be travelling at was not a major factor in the court's decision.*

*[d] The Respondent had cause to pull over to the right to pass some parked cars. He can be seen to be travelling at a speed which appears appropriate for this manoeuvre. A group of young males were on the public highway. We took into account that the driver would have been concentrating on his view ahead due to having to pass the parked cars but he kept a good distance away from them.*

*[e] The CCTV footage shows one youth kick a football to another. The young man to whom this ball was passed then stepped several paces backwards and into the path of the wing mirror of the van. This is the only evidence we saw or heard of the football being passed therefore, in the absence of any further evidence it is impossible to know what the young men were doing before that time eg. whether a game of football was underway.*

*[f] We do not consider the time between this movement and the time of impact to have afforded the Respondent any time to sound his horn. The CCTV does not show the brake lights of the vehicle however the front of the vehicle can be seen to dip (which we considered was evidence of braking) and the vehicle abruptly change course the right in an attempt to avoid contact with the youth. The vehicle came to an almost instantaneous stop which we took to be further evidence both of the speed the vehicle was travelling prior to impact and the steps taken by the driver in attempting to avoid a collision.*

*Consequently, we found we found there was no case to answer. A verdict of not guilty was recorded.*

## Discussion

12. I have reached the conclusion that the half-time decision in the present case did involve a material "error of law", so that it cannot stand. My reasons are as follows:

- i) The Magistrates have clearly explained at [e] that the CCTV shows the youth to whom the ball was passed "stepped several paces backwards and into the path of the wing mirror of the van". They have clearly explained at [f] that "the time between this movement and the time of impact" did not allow the Respondent any

time to sound his horn, and they then describe the evidence of the Respondent braking, turning to the right and coming to a stop. That description of what can be observed as happening, at that time, was in my judgment unimpeachably open to the Magistrates as an interpretation of the CCTV and other prosecution evidence, taken at its highest.

- ii) The problem is that this does not deal with the important question whether the Respondent should have reduced his speed and/or sounded his horn before “this movement”, as he was approaching pedestrians in the road, having seen that they were in the road ahead. This really matters. The Magistrates record at [c] that the weather was fine and clear. They also record at [c] that the Respondent would have been concentrating on his view ahead [d]. They record at [d] that the road ahead was where a group of young males were on the public highway. Pausing there, the note of interview was prosecution evidence in which – certainly taken at its highest – the Respondent was accepting having seen the youths in the road ahead. Then there are the following additional circumstances. The Respondent was staying driving on the ‘wrong side of the road’, having passed some parked cars on his left and with further parked cars on the left up ahead. This was a built-up area. There were speed-bumps. In the note of interview – relied on as prosecution evidence – the Respondent had been asked about his actions after seeing pedestrians in the road; about why he did not “think about going any slower”; and about what a normal, careful and competent driver would do “when you see pedestrians in the road and they’re still in the road as you’re getting closer”. He said: “I was hopeful [I] didn’t have to stop”; “I was expecting to pass them, go back on the path”; and “hopefully believe they’re gonna go back out the way cos there’s something coming a van or car or whatever”.
- iii) Mr Dawson submits that, read fairly and as a whole, the Magistrates were reasonably drawing the irresistible inference from the prosecution evidence – taken at its highest – that the Respondent had taken the action of slowing down, as a response to seeing the youths ahead in the road. But that is not what the Magistrates say in their reasons. Having considered the CCTV and the notes of interview, I have not been able to see how it would be an irresistible inference. Indeed, the Note of Interview records the Respondent being asked about seeing the youths in the road ahead, and about being asked why he did not think about going any slower, but it records no indication in response from the Respondent saying that he slowed down in response to seeing the youths in the road.
- iv) Mr Dawson submits alternatively that, read fairly and as a whole, the Magistrates were reasonably concluding that the speed at which the Respondent was proceeding was already appropriate for a careful and competent driver who had seen the youths in the road ahead; and who was then proceeding onwards in the circumstances which are visible from the CCTV. He emphasises the Magistrates’ repeated references to the speed as appropriate, and reference at [f] that the “almost instantaneous stop” was further evidence of “the speed the vehicle was travelling prior to impact”. In my judgment, the problem with this is that the Magistrates make two explicit references to speed ‘appearing’ to be “appropriate”. The idea of ‘apparent’ is itself difficult to square with the evidence at its highest. But, leaving that to one side, the references to appropriateness of speed are very clearly expressed. First, there is the clear reference at [c] to

apparent appropriateness of speed “for the area, the road conditions and the weather”. Second, there is the clear reference at [d] to apparent appropriateness of speed “for this manoeuvre” being to “pull over to the right to pass some parked cars”. The problem is that these features beg the key question: was the speed appropriate, on any view of the evidence, having seen youths in the road ahead?

- v) There is another problem. The Magistrates say at [c] that they “made a determination as to the speed of the vehicle as shown on the CCTV” and that “the speed the defence expert considered the vehicle to be travelling at” was “not a major factor in the court’s decision”. Mr Davey’s defence expert report included his views about speed. It was based on what he derived from the CCTV and from other features of the evidence. That evidence had been pre-read by the Magistrates, as they explained at [c]. It was not agreed. The time at the trial for the prosecution to challenge it had not yet arrived. Mr Dawson submits that the Magistrates were well aware of that. He says that, insofar as they had “an eye on” the defence expert evidence, that did not vitiate their decision. He says that, read fairly, the reference to “not a major factor” really means “not a factor” or “not a material factor”. Mr Dawson submits that the Magistrates’ view was based on the CCTV; and that the Davey report did not influence, still less materially influence, their decision. I have been unable to accept these submissions. On a straightforward reading of the Magistrates’ reasons, the Davey report with its evidence about the Respondent’s speed – which included an opinion he had derived solely from the CCTV and then other views derived from other evidence and the evidence as a whole – was taken into account, when it needed to be put to one side because it was unagreed defence evidence and the time to challenge it at the trial had not yet arrived.

13. In my judgment, accepting the arguments of Mr Connolly, the Magistrates’ clear and candid reasons do not constitute a basis which is reasonable, in public law terms, for their finding of no case to answer, applying the rigours of that legal test. I cannot accept the submissions to the contrary of Mr Dawson. I repeat. The question whether, at the conclusion of all the evidence, the Magistrates would have convicted is a separate matter: see Young at §19. I will therefore answer the two questions, which the Magistrates have properly raised for the opinion of the High Court, as follows: “(1) In law no, because of (2) below. (2) For the reasons explained in the judgment, yes.” I will quash the Magistrates’ decision dismissing the charge and direct that the case be listed for a fresh trial, heard by a differently constituted bench.

### Costs

14. There was a contested issue as to costs. I accept that there is no jurisdictional bar. But I am satisfied, in all the circumstances of the present case, that what the interests of justice require is: (i) to apply the criminal costs regime (see Lord Howard v DPP [2018] EWHC 100 (Admin) at §§27-29); and (ii) to say nothing about costs in this Court so that, if there were a subsequent conviction following retrial, the magistrates’ court could consider whether these costs should be included in any costs order made by that court. See Barking and Dagenham LBC v Argos Ltd [2022] EWHC 2466 (Admin) at §§15-16 and 18, by reference to s.18 of the Prosecution of Offences Act 1985; also DPP v Ridings [2024] EWHC 498 (Admin) at §31. Mr Connolly has not persuaded me that the civil costs regime should be applied, with an order for costs to follow the event;

nor that I should prefer to Argos observations in an order in DPP v Barton [2024] EWHC 1350 (Admin).