[2019]GRC002

IN THE ROYAL COURT OF GUERNSEY

ON APPEAL FROM THE MAGISTRATE'S COURT

Between **NICHOLAS PETER DE LA HAYE** **Appellant**

-v-

THE LAW OFFICERS OF THE CROWN **Respondent**

Appeal against Conviction imposed by the Magistrate's Court on 26th November 2018

Before: Richard James McMahon Esq., Deputy Bailiff

Hearing date: 21st January 2019

Judgment handed down: 25th January 2019

Advocate for the Appellant: **Advocate F Warrilow**
Advocate for the Respondent: **Advocate R J Calderwood**

Cases and materials referred to in the Judgment:-

The Traffic Signs and Traffic Light Signals Ordinance, 1988
The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988
Guest v Law Officers of the Crown (unreported, 9 January 2003)
Law Officers v Nicolle (unreported, 22 April 2004)
Law Officers v Wilson (unreported, 28 October 2004)
Attorney General for Jersey v O'Brien [2006] UKPC 14
Archbold, Criminal Pleading, Evidence and Practice
The Criminal Appeal Act 1968
The Criminal Appeal Act 1907
The Magistrate's Court (Criminal Appeals) Rules, 1989
Law Officer of the Crown v Collins (1989) 8.GLJ.16
The Court of Appeal (Guernsey) Law, 1961
Parks (1962) 46 Cr App R 29
Law Officers v Holliday [2000-02] GLR 9
The Road Traffic Act 1988
The Highway Code, Guernsey Supplement

Introduction

1. On 26 November 2018, the Appellant, Nicholas De La Haye, was found guilty in the Magistrate's Court of an offence of driving without due care and attention. He was disqualified from driving for six months and fined £800.

2. By a Notice of Appeal dated 10 December 2018, the Appellant now appeals against that conviction. There is no appeal against the sentence in the event that the appeal against conviction is dismissed. The detailed grounds of appeal attached to the Notice of Appeal are based on the contention that the decision to convict cannot be supported having regard to the evidence. That contention has been advanced on three bases:

   (a) the Judge of the Magistrate's Court failed to determine the point of collision between the bicycle and the Appellant's car, which was an issue that was central to determining correctly the Appellant's guilt or innocence;

   (b) the Judge failed to draw the proper conclusions for her findings as to the witnesses' evidence in respect of what they saw; and

   (c) the Judge did not allow the admission into evidence of a receipt from the Appellant's mechanic.

The trial proceedings

3. The trial began on the afternoon of 23 November 2018, when the Crown's case was put. Evidence was heard from the rider of the bicycle with which the Appellant's car was involved in a collision, Svetlana Head, from the driver of a car that had been behind Mrs Head, Debbie Bisson Le Noury, and from a cyclist who had been approaching the scene of the collision from the opposite direction, Jennifer Merrett. The formal evidence from the police officers, PC Allan, PC Batiste and PC Blondel, had been agreed and was read. The hearing then adjourned to the afternoon of 26 November 2018, when the Appellant gave evidence and Advocate Warrilow made her closing submissions on his behalf.

4. There was no dispute that there had been a collision at the Halfway filter at around 7.20 pm on 18 July 2018. The weather was dry and sunny. When delivering judgment, the Judge summarised the respective cases as follows:

> "*In summary, the prosecution case is that it was not the defendant's turn to enter the filter-in-turn or box junction because the cyclist, Mrs Svetlana Head, had already entered the filter-in-turn junction and it was her turn to do so and that when the defendant entered that junction he did not have the right of way because it was not his turn and the cycle ridden by Mrs Svetlana Head had already entered the filter-in-turn junction. It is therefore the case for the prosecution that the collision between the car and the cycle was the fault of the defendant.*
>
> *In summary, the defendant's case is that he did comply with the requirements in respect of the filter-in-turn junction and when he drove or entered into the junction it was his right of way or, perhaps more correctly termed, it was his turn to drive into it and it was not the turn of Mrs Svetlana Head on her cycle. He therefore says that the prosecution cannot prove this case against him because the collision that took place was the fault of the cyclist and he believes that the cyclist just did not see him driving into the junction and the collision that occurred was therefore her fault.*"

5. In her closing submissions, Advocate Warrilow begun by drawing attention to the lack of clarity in the Crown's case as to where the Appellant's car impacted the cyclist. (This is the first issue raised in this appeal.) The Court was invited to look at some photographs, with the Judge commenting that it was not particularly helpful because "*what I cannot get from that photograph is who hit whom and necessarily where, can I?*", to which Advocate Warrilow suggested it demonstrated that there had been "*a side-on collision rather than the car hitting the back of the bike*". It was at this point that Advocate Warrilow said that she had "*some evidence of the repairs that were made to the car but it is not before the court*", to which the Judge responded that she would deal with the case on the basis of the evidence heard in court. (This is the third issue raised in this appeal.) Advocate Warrilow highlighted the way in which the Traffic Signs and Traffic Light Signals Ordinance, 1988 covers filters-in-turn and she suggested that the version of events given by the Appellant was that he had driven as a competent, reasonable driver would have done, "*slowing down as he approached, looking to see at the filter itself what other vehicles were there and driving across with a clear sight at the filter itself*". Advocate Warrilow drew attention to the evidence given by Mrs Le Noury and Mrs Merrett that there may have been other cars at the filter at the time. She ended by noting that no one had suggested that Mrs Head had stopped at the filter and she had stated she had not seen the Appellant's car, so it followed that she had not herself carried out the requisite checks before entering the filter. Because the Appellant had not fallen below the requisite standard of driving, he should be acquitted.

6. The evidence of the complainant, Mrs Head, was that she was heading up to the filter with a view to turning right to cycle towards Town. She looked right and there were no cars approaching and she looked left and there were no cars approaching from that direction. She had decided to head over to the cycle lane. Within the filter, she looked left to make sure there were no cars around and that was when she was hit by the Appellant's car. She felt a touch on the left-hand handlebar and pedal. As a result of the collision she was catapulted over and ended up in the road on her left side. She added that she recalled the Appellant saying to her words to the effect that he had not seen her until after the collision had occurred. During cross-examination, she accepted that traffic was quite light. She stated that she had slowed down approaching the filter. She considered that it was not possible that there was a car there but that she had simply not seen it; saying explicitly "*it's not possible*". She did not agree with the suggestion put to her that it was just an unfortunate accident. There was no re-examination.

7. The evidence of Mrs Le Noury was that she had been driving her car behind the bicycle coming down Vale Road towards the Halfway filter. Apart from the lady on the bicycle in front, she did not notice anything as she was approaching the filter. The cyclist "*went across the filter and then the next minute she was on the floor*". She did not have her eyes on the cyclist at all times, but was "*just more assessing the situation as a whole*". In relation to the cyclist, she stated:

> "*She entered the junction of the filter. There didn't appear to be anyone anywhere near there and then the next minute … I didn't even see the car coming. It was just … It was just there in the filter and then collided with her.*"

Having stopped her own car so that no one coming from the Bridge direction could pass, Mrs Le Noury got out of her car and spoke to the Appellant, enquiring how he could not have seen the cyclist, to which he replied "*I didn't see her*".

8. In cross-examination, Mrs Le Noury disagreed with the suggestion that when she reached the filter it was clear and so her turn to go:

"*It never really got to be my turn because she had obviously gone on to the filter and then been hit by the car so at that point nothing else registered about what other cars were coming along. I was more concerned about the lady on her bike.*"

In relation to the suggestion that, because she was concentrating on the cyclist, it was possible that was why she had not seen the Appellant's car, she replied:

"*Possibly but then when I am going to a filter I generally have a vision of whatever's around me to make sure that I'm not going to go when it's not my turn to do so.*"

Whilst she agreed with Advocate Warrilow that it was not possible to be 100% certain what happened at the moment of the collision, Mrs Le Noury added that she "*saw the cycle enter the filter and to the best of her knowledge it was her right of way to go*". There was no re-examination.

9. In Mrs Merrett's evidence, she acknowledged that she was tired after attending a sitting of the States of Deliberation that day. She was cycling towards the Halfway filter away from Town on the cycle path. She was conscious that a cyclist might join the cycle path and so be heading towards her at that point so she was looking ahead. She saw a cyclist coming down Vale Road towards the filter. She saw the cyclist, on approaching the filter, look left and right. The cyclist entered the filter at about the time Mrs Merrett was cycling past it, and Mrs Merrett thought the cyclist turned her bicycle in such a way as to use the road rather than the cycle path. Mrs Merrett looked ahead to check for buses and saw a car approaching. She did not think the car would slow down and wondered if the driver was thinking about overtaking the cyclist within the filter. Although she had just gone past, she turned round and saw the car hit the back of the cyclist, causing the cyclist to go flying. Mrs Merrett was aware of another car, which she described as a four-by-four, coming up from Vale Road. She stopped cycling and placed her bicycle to stop cars coming across. Having called the emergency services, she went and spoke to the driver of the car to check if he was OK, to which the driver responded "*Don't worry about me*". She entered some details on her mobile telephone before leaving the scene and later used those notes to assist when preparing her statement for the Police.

10. During her cross-examination, Mrs Merrett disagreed that looking between 100 and 200 yards from before the filter to Vale Road was a long way, adding that she could "*see quite clearly*". She believed that, before reaching the filter, the cyclist had seen her. Mrs Merrett reiterated that the cyclist had turned and was parallel to her, which is when she looked up and saw the car. At that time, the car was not on the filter, but near the filter. The car "*seemed to be going at the same steady speed*" and "*When I looked up, he was coming towards the filter and there was no change of speed*". Mrs Merrett was asked whether the car driver had slowed "*to allow another car out from the Vale Road entrance to the filter*", but Mrs Merrett replied that she did not recall any other car and thought the four-by-four was the first car coming from the Vale Road and she had not observed any car going to the filter before the cyclist. In relation to what Mrs Merrett saw of the collision, she accepted that her view of the point of impact was obscured by the car. She maintained that the car hit the cyclist and that she heard it. From that position, she felt the car must have hit the back of the bike. She had used the notes she made on her mobile phone when making her statement on 11 September 2018 for the details recorded on it, with the remainder being her recollection. She clarified that, as a result of her day, she had been physically, but not mentally, tired. There was no re-examination.

11. The Appellant had been interviewed on 24 July 2018. During the course of that interview, he explained:

"*… as I was approaching the filter in the junction at the Halfway I saw a car from Vale Road towards the filter, then towards the town. I then proceeded through the filter in turn. As I was passing the filter in turn junction, I heard a thud to the right-hand side of my car. I immediately stopped my car and when I got out of the vehicle I saw a woman laying on the ground after the filter in turn junction. I never saw the woman on the bicycle come out of the filter in turn. Never seen her at all.*"

He stated he was approaching the filter at just above 20 miles per hour and the checks he undertook were: "*I looked to my right. I did not see any vehicle on the junction or at the junction other than the vehicle that had exited prior to my arrival heading towards town.*" He added that there is vegetation on the island which obscures vehicles and cyclists approaching the filter junction. He used the filter about ten times a day.

12. When giving judgment, the Judge similarly referred to the content of this interview and commented that the Appellant's oral evidence had not been dissimilar to what he had told the Police. The Judge had, quite properly, already referred to the Appellant having an exemplary driving record for 23 years and being of good character, which she reminded herself was to be taken into account when assessing his credibility. Before turning to the Appellant's evidence, the Judge had summarised the evidence she had heard, broadly in terms of what I have extracted from the transcript, but without, of course, having the benefit of such a transcript, demonstrating that the Judge had a good note of all the evidence.

13. The decision given was as follows:

"*In the matter before me, I have taken into account the burden and the standard the prosecution have in this matter to prove the case beyond reasonable doubt. Again, I repeat, the defendant's absolute good character and its relevance and, thirdly, the fact that some time has passed, which affects memories, as also no doubt did the sudden and distressing nature of the incident. I have taken all of the evidence into account and all the matters that I have referred to. I am satisfied that it was the cyclist, Svetlana Head, who had the right of way and it was her turn on the filter-in-turn junction and I say so for the following reasons that the prosecution have proven this case beyond reasonable doubt. Firstly, two independent witnesses were clear, in particular Jennifer Merrett, as to what she or they saw of the incident. It was sufficient for Mrs Merrett on the day to make notes or details of the car, whom she saw had been responsible for the incident.*

Secondly, at no time did the defendant see the cyclist. Even if he had been in the right, which I do not accept he was, even if it had not been Svetlana Head's turn, which I am satisfied it was, he surely would have seen someone on a cycle heading in his direction from the filter-in-turn across the road and into or towards his lane and yet he did not see her. I am wholly satisfied it was the cyclist's turn, as seen by the two independent witnesses. For whatever reason, the defendant just did not see the cyclist. One of the witnesses described how small the cyclist was. Perhaps it was the vegetation. It matters not. That is not for me to speculate.

I am satisfied that the prosecution have proven to the requisite standard that the defendant did drive into the filter-in-turn when it was not his turn. I am satisfied it was because he did not see the cyclist, again for whatever reason. I am satisfied it was the defendant who caused the collision because of his failure to see the cyclist. It was not the responsibility of the cyclist. Other independent road users could see her but this defendant did not, I am afraid. I am satisfied that the responsibility lies

wholly with the defendant who drove into the junction without taking the requisite care and attention required in law to see and take account of another road user and I find the defendant guilty."

The law

14. The Advocates broadly agree about the legal principles operating in an appeal such as this. The appeal is brought pursuant to the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988. That Law does not specify the ground on which such an appeal can be made, so the approach of this Court has been to treat the grounds available as being those that can be pursued on an appeal from a conviction on indictment in this Court to the Court of Appeal. Section 6 of the Law provides that this Court can confirm, reverse or vary the decision appealed against, may remit the matter with its opinion thereon to the Magistrate's Court or make such other order in the matter as may be just, thereby exercising any power which the Magistrate's Court might have exercised. The Appellant invites this Court to reverse the decision and substitute a verdict of not guilty.

15. The only ground of appeal mentioned in the Appellant's Notice of Appeal is that the verdict cannot be supported having regard to the evidence. Advocate Warrilow has referred to the way it was put by the Court of Appeal in *Guest v Law Officers of the Crown* (unreported, 9 January 2003, at para. 12):

> "*Usually this Court is considering the verdicts of the Jurats in the Royal Court. Such verdicts are not "speaking" verdicts, and it is not, therefore, possible to discern by what process of reasoning, or lack of it, the Jurats have reached their conclusions. In those circumstances, if the summing up is sound, the Court may well not be able to interfere unless the verdict is obviously wrong. But where, as here, the verdict is one of a legally qualified Magistrate it is a "speaking" verdict because the Magistrate has to state reasons for his verdict in his judgment. In such a case it is possible for this Court to review the Magistrate's process of reasoning, and to consider whether, by that process, the Magistrate has reached a verdict which is "unreasonable", or one which "cannot be supported having regard to the evidence" or whether "on any ground there was a miscarriage of justice".*"

Accordingly, this Court can similarly review the process of reasoning in the Magistrate's Court in order to determine if the "*judgment reveals a process of reasoning which is defective, or which cannot support the verdict ... reached*", in which case the Court "*can and should intervene*" (para. 13).

16. Relying on that test, Advocate Warrilow submits that the Judge's reasoning was defective because she did not consider when giving judgment the crucial fact of the point of collision and further that the process of reasoning cannot support the verdict because the Judge accepted evidence that was mutually exclusive, in that Mrs Merrett's account of the collision differed radically from what the Appellant had said and also what Mrs Head said, that the totality of the evidence was insufficient to find guilt and the Judge should have admitted into evidence the receipt.

17. In the context of an appeal to this Court from the Magistrate's Court, Advocate Calderwood has highlighted what Deputy Bailiff Rowland stated in *Law Officers v Nicolle* (unreported, 22 April 2004, at para. 63):

> "*This Court will not usually interfere with findings of fact made by a Judge sitting in the Magistrate's Court unless there was no evidence to support his findings or if the*

findings were such that no reasonable Judge, giving himself proper direction and applying the proper considerations, could reach them."

In similar vein, the test was put as follows by Deputy Bailiff Rowland in *Law Officers v Wilson* (unreported, 28 October 2004, at para. 31):

"*Where, as in this case, a Magistrate rejects a defendant's evidence and accepts the evidence of the principal prosecution witness after oral evidence has been given and they have been observed in the witness box it will only be in rare cases that interference by an appellate judge will be justified. Not to have seen the witnesses puts the appellate judge in a disadvantaged position.*"

18. That latter comment is one frequently made when an appeal on the basis that a verdict is not supported by the evidence is advanced. It reflects the way it was put by Lord Hoffmann in a Jersey appeal to the Judicial Committee of the Privy Council (*Attorney General for Jersey v O'Brien* [2006] UKPC 14, at para. 25). Lord Hoffmann was highly critical of the manner in which the Jersey Court of Appeal appeared to have usurped the function of the Jurats as fact-finders and "*tried the case on the written record and allowed the appeal because, on their own somewhat imperfect understanding of the prosecution's case, they would not have convicted.*" Although it has not been of great significance in this case, nevertheless, it is a pitfall of which I have been conscious on this appeal. I recognise that the Judge has tried the case and my function is only to review her findings and decide whether or not the evidence adduced supported them.

19. Advocate Calderwood has further suggested that the appropriate test, taken from the 1966 edition of *Archbold, Criminal Pleading, Evidence and Practice*, (the relevance of that edition being it was just before the Criminal Appeal Act 1968 repealed the Criminal Appeal Act 1907, in which the ground of appeal that the verdict cannot be supported having regard to the evidence existed), is whether the verdict was "*obviously and palpably wrong*". The passage is found in para. 934:

"*It is not a sufficient ground of appeal to allege that the verdict is against the weight of the evidence. Aladesuru v. R. [1956] A.C. 49; 39 Cr.App.R. 184. Nor is it sufficient merely to show that the case against the appellant was a very weak one: R. v. McNair, 2 Cr.App.R. 2; nor is it enough that the members of the Court of Criminal Appeal feel some doubt as to the correctness of the verdict: R. v. Simpson, 2 Cr.App.R. 129; R. v. Crook, 4 Cr.App.R. 60; R. v. Graham, 4 Cr.App.R. 218; nor that the judge of the court of trial has given a certificate on that ground: R. v. Perfect, 12 Cr.App.R. 273; R. v. Hopkins-Husson, 34 Cr.App.R. 47. The court will set aside a verdict on a question of fact alone only where the verdict was obviously and palpably wrong. R. v. Hancox, 8 Cr.App.R. 198.*"

20. In the light of these various authorities, I recognise that I have the benefit of a reasoned decision in which the Judge outlined the various requirements before she could find the Appellant guilty, with which no issue is taken, outlined the evidence she had heard, and drew conclusions from that evidence in order to reach the verdict of guilty. The focus, therefore, is on the process of reasoning and whether the evidence supports that finding. In reviewing that finding, I am guided by the need for the Appellant to satisfy me that the decision is obviously and palpably wrong. In that regard, I must not attempt to re-try the case on the papers, especially because the Judge has had the benefit of seeing and hearing the witnesses. However, if I am satisfied that the Appellant has shown that the judgment reveals a process

that is defective or that the evidence does not support the finding of guilt, this Court can and should intervene and reverse that decision.

Non-admission of receipt

21. I will start with the third ground of appeal. In my judgment, this ground is wholly without merit for the simple reason that there was no application to admit this receipt relating to the damage to the Appellant's car into evidence. Because there was no application, there was no refusal of such an application. In any event, had there been an application and a refusal, it would not fall within the only ground of appeal advanced on behalf of the Appellant, being that the Judge's decision cannot be supported having regard to the evidence. Instead, it would have had to have been argued as a wrong decision on a question of procedure, being a question of law.

22. Advocate Warrilow attempted to develop this ground of appeal by referring to what the receipt showed, which is why it should now be admitted into evidence in the case. In doing so, she made an application that rule 6(4) of the Magistrate's Court (Criminal Appeals) Rules, 1989 enable this Court to "*order the production of any document, exhibit or other thing which may appear to be necessary for the determination of the case*". During the course of the hearing, I rejected that argument because, in my opinion, it is not available to permit the ordering a document that was available and could have been adduced in evidence before the Magistrate's Court. In doing so, I had in mind the approach taken by the Court of Appeal in *Law Officer of the Crown v Collins* (1989) 8.GLJ.16, to which Advocate Calderwood referred, in relation to a similar power found in section 32 of the Court of Appeal (Guernsey) Law, 1961. Having regard to the principles derived from *Parks* (1962) 46 Cr App R 29, the Court of Appeal held that, before the appellate court would exercise its discretion to grant leave for such evidence, that evidence must not have been available at the trial, it must be relevant, capable of belief and that, if adduced, there might have been a reasonable doubt in the mind of the person or persons finding the facts. Because it was admitted that this evidence was available at trial, there was, in my view, no basis on which its admission on this appeal was warranted.

23. To the extent that Advocate Warrilow went still further and acknowledged that she was at fault in not adducing the evidence during the course of the trial, that would again amount to a different basis of appeal from the contention that the Judge's decision cannot be supported having regard to the evidence. *Collins* itself recognises that the manner in which defence counsel conducts a trial can be such that it renders the conviction unsafe and unsatisfactory, although such cases would be rare. However, this is a ground that really should be advanced on an appellant's behalf by someone other than the Advocate in question (see, eg, as in *Law Officers v Holliday* [2000-02] GLR 9). Accordingly, because it is outwith the Appellant's grounds of appeal, I have given no further consideration to this aspect of Advocate Warrilow's submissions.

Point of collision

24. Advocate Warrilow's primary submission on behalf of the Appellant relates to the contention that the Judge did not determine whether the Appellant had driven into the back of Mrs Head's bicycle, which is how it was put by Mrs Merrett, or whether, in accordance with both Mrs Head's evidence and that of the Appellant, the point of collision was the side of the Appellant's car with the left-hand side of Mrs Head's bicycle. (She clarified that her reference to point of collision was not related to the position within the filter junction at which the collision took place.) In her submission, this was a crucial part of the Judge's determination because it would have led to a doubt in her mind as to whether to accept the

other evidence given by the witnesses because it would have shown that the Appellant's evidence was to be believed and preferred.

25. In relation to the Appellant's credibility, Advocate Warrilow fairly drew attention to the fact that the trial in the Magistrate's Court had proceeded on the premise that the Appellant was an exemplary driver of more than 20 years' standing. However, it has since been recalled by the Appellant that he had an old conviction for speeding. As Advocate Calderwood conceded, though, something from such a long time ago would not have had any impact on the approach the Judge took to the Appellant's evidence and so I pay no further attention to this aspect in assessing whether the verdict of guilty cannot be supported having regard to the evidence.

26. Advocate Calderwood further submitted in relation to this ground of appeal that the Appellant is seeking to place too much weight on the point of collision. The Judge had commented that looking at photographs did not tell her who had hit whom. Had this been the crucial issue that Advocate Warrilow suggests it was, it had been open to the Appellant to adduce expert evidence about whether the point of impact was relevant to demonstrating whose evidence about who had entered the filter in accordance with whose turn was to be preferred. The Appellant had chosen not to advance his case in that way. In any event, what mattered was what the Judge had determined, namely whose entitlement it was to enter the filter and whether the Appellant had seen Mrs Head on her bicycle.

27. I agree with Advocate Calderwood. The Judge could only try this case on the evidence adduced by both sides. The Appellant had chosen not to adduce evidence with a view to supporting his account that he had entered the junction first and so making it believable. There is no requirement for a court to determine every disputed issue of fact because what matters is to consider whether, to the requisite standard, the prosecution has proved the elements of the offence charged. It is permissible for a Judge to find some, rather than all, of a witness's evidence believable. Accordingly, to the extent that there was any doubt as to what Mrs Merrett had to say about her perception of the point of collision, it does not become a factor if it is something that does not affect the elements of the offence that had to be proved. In any event, if it were relevant, I think it is explicable because Mrs Merrett's evidence was that the collision took place behind her. Because she was looking back, her view of where the point of collision was on the Appellant's car was masked by the vehicle itself. This was not, therefore, a sound reason on which to reject the other evidence she gave about looking ahead of her before anyone entered the filter and then stating that Mrs Head had entered the filter before the Appellant's car did so.

28. The summary of the Crown's case, to which I have already referred, focused on whose turn it was to enter the filter-in-turn. The 1988 Ordinance provides that orders or directions may be given about the manner in which persons use highways. The filter-in-turn sign is dealt with as sign number 20 and the road marking as sign number 39, but both have the same order or direction:

> "*At the intersection before which the sign is marked a driver must not enter any part of the carriageway into which he can see that another driver proposes to enter into his path unless–*
>
> *(a) he reaches the intersection before the other driver; and*
>
> *(b) the driver who last entered the intersection did not, to his knowledge, do so from the same entry as himself.*"

The definition of "*driver*" in section 16(1) covers a person riding a vehicle, which term is also defined to include "*a cycle*". There was no dispute over how these provisions operate.

29. There is no statutory definition as to what constitutes driving without due care and attention. Under section 3ZA of the Road Traffic Act 1988, in England and Wales there is clarification that the single test is if (and only if) the way the person drives "*falls below what would be expected of a competent and careful driver*". That was a codification of the common law position. The test the Judge used was whether the Appellant "*departed from the required standard of driving*". She also reminded herself of the additional guidance in the local supplement to *The Highway Code*, to which reference had been made:

> "*At a junction which is controlled by Filter in Turn signs, all directions have equal priority, so give way IN TURN to vehicles which also intend to enter the junction, As these are also usually box junctions, you must not enter the box unless your exit is clear.*"

30. In the light of what was in issue in this case, the way the Judge summarised the respective cases was, in my view, faultless. What mattered first was whether the Appellant could be believed that he had the right of way at the filter-in-turn. If he did, he was entitled to be in the filter-in-turn at the point of collision. However, if Mrs Head was entitled to be in the filter-in-turn, she should have been seen by the Appellant and he should have given way to her. The evidence from the two independent witnesses was that Mrs Head had already entered the junction box before the Appellant in his car reached it. That is what Mrs Head said and it was only the Appellant who gave contrary evidence. The Judge did not believe him. The point of collision would not, on the basis of this evidence, affect the conclusion the Judge reached and which on the evidence given, I find she was entitled to reach. Having had the benefit of seeing and hearing the witnesses, the Judge was well-placed to make that assessment.

31. As I understand the Appellant's case, he was saying that he was already in the filter-in-turn junction box when Mrs Head entered that junction box and rode into the side of his car. He added that it was his turn to enter the junction box because there had been a car that had gone through the filter-in-turn from Vale Road prior to Mrs Head on her bicycle. The issue of the car in front of Mrs Head was not put to her in cross-examination. It was not put to Mrs Le Noury in cross-examination. If it was as material to the Appellant's case as now suggested, it should have been. The question was put to Mrs Merrett as to whether it was possible that the Appellant had slowed to allow another car out from the Vale Road entrance to the filter, to which Mrs Merrett replied that she did not recall another car and that she had not observed a car such as that being suggested to her. (Given the way the respective cases were put, this was a disputed fact with no direct bearing on the outcome and so an example of an issue on which no express finding was needed.) Accordingly, the only evidence of a car prior to Mrs Head emerging on to the filter and driving towards Town was from the Appellant himself. That aspect of his evidence was not tested in cross-examination but, for the reasons mentioned by Advocate Calderwood, it was not strictly relevant, because the requirement is to give way in turn.

32. Having regard to the totality of the evidence before the Magistrate's Court and the central issue that had to be resolved about who had to give way to whom and who kept a proper lookout in those circumstances, the decision reached by the Judge was one that was supported by the evidence. The Judge preferred the evidence of the independent witnesses, and Mrs Head, to that of the Appellant. In my view, she was entitled to do so because there was

nothing undermining the credibility of the evidence given by those witnesses to suggest that it should have been rejected. I reject the Appellant's first ground of appeal.

Failing to draw proper conclusions

33. I have touched in passing on the Appellant's second ground of appeal because of the way in which it overlaps with the first ground of appeal. Advocate Warrilow submits that there ought to have been sufficient doubt in the Judge's mind arising from the inconsistencies in the witnesses' accounts, and that doubt should have been exercised in the Appellant's favour.

34. As Advocate Calderwood submitted, there are often inconsistencies between witnesses' accounts. Indeed, if there were not, the suspicion arises that there has been inappropriate collusion between them. What matters is the overall question of whether there is evidence from which a verdict of guilty can properly follow. If not, then an appeal contending that the verdict cannot be supported having regard to the evidence will succeed.

35. In the present case, the Judge was, in my view, entitled to put to one side any aspect where the accounts of the prosecution witnesses were not entirely consistent and concentrate instead on what was the crux of this case. Unless there has been an obvious and palpable error, those are the types of issue on which a trial judge, having the benefit of seeing and hearing the witnesses and assessing whether what they say is credible, is best placed to form a judgment. The main issue centred on whose turn it was to enter the filter and, in that regard, if it were Mrs Head's turn, whether the admission of the Appellant that he had not seen Mrs Head on her bicycle meant that he had not driven to the required standard. I have already set out the evidence given and my view that the summary given by the Judge was an accurate summary of the evidence. Ultimately, the decision turned on whether the evidence of the Appellant was accepted or not. If it had been, then the Judge would have acquitted. The finding of guilt demonstrates that his evidence was not believed and that was after the Judge had reminded herself that his previous good character was a factor for her to take into account before reaching that conclusion.

36. Whilst I have listened carefully to everything said on behalf of the Appellant by Advocate Warrilow, and I have re-visited the transcript of the proceedings in the Magistrate's Court, I am satisfied that there was clear and sufficient evidence from which the verdict of guilty could properly follow. Most telling is that the Appellant did not see Mrs Head. His account that she came into the filter-in-turn junction box and rode into the side of his car, which was, on his account, travelling at a little over 20 miles per hour, was rejected by the Judge and, in my opinion, she was entitled to reach that conclusion, because she preferred the evidence of the two independent witnesses that Mrs Head had entered the junction box first in accordance with the priority given to her under the direction for how to deal with a filter-in-turn. On that basis, the Appellant's second ground of appeal also fails.

Conclusion

37. For the reasons I have given, the Appellant's appeal against his conviction for driving without due care and attention is dismissed.