Neutral Citation Number: [2023] EWHC 2879 (Admin)

Case No: CO/614/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 17/11/2023

Before :

LORD JUSTICE DINGEMANS
and
MRS JUSTICE JEFFORD DBE

- -

Between :

The King on the application of Simon Wiltshire	**Claimant**
- and -	
Crown Court at Bristol	**Defendant**
- and -	
(1) Crown Prosecution Service	**Interested Parties**
(2) Jack Morton	

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- -

Mr Ian Bridge (instructed by **Keoghs LLP**) for the **Claimant**
Mr Paul Jarvis (instructed by the **CPS**) for the **First Interested Party**
Mr Matthew Paul (instructed by **DAC Beachcroft**) for the **Second Interested Party**

Hearing date: 23 October 2023

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Judgment Approved by the court for handing down

This judgment was handed down remotely at 2.00 on 17th November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

Mrs Justice Jefford:

Introduction and background facts

1. This is a claim for judicial review of the decision of the Crown Court dismissing an appeal from the conviction in the Magistrates Court of the claimant, Simon Wiltshire, for careless driving contrary to section 3 of the Road Traffic Act 1988. Section 3ZA(2) provides that "A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver."

2. The relevant events occurred on 1 April 2019 on the A361 at Holwell Hill, Nunney, near Frome in Somerset. Mr Wiltshire was the driver of a Scania tipper truck. Immediately behind him was a DAF HGV driven by Mr Jack Morton. Further back was an HGV driven by the witness, Giles Symonds, which had a dashcam fitted, and behind that a number of other vehicles.

3. In short summary, Mr Wiltshire wished to make a left hand turn. He did so at a point where, a little further on, there was a right hand turning and a right hand filter lane for that right hand turn. In order to make the left hand turn, he pulled out over the centre line into the chevrons before the right hand filter lane before entering the filter lane itself and then turning back to the left. As he did so Mr Morton crashed into him, Mr Morton having thought that Mr Wiltshire was turning right.

4. Both Mr Wiltshire and Mr Morton were charged with careless driving and on 4 March 2021, in the Weston-Super-Mare Magistrates' Court, both were convicted. Both appealed against conviction. The appeal was heard in the Crown Court over three days from 14 to 16 November 2022 by Mr Recorder Turner sitting with 2 lay justices. As is well known an appeal from the Magistrates Court to the Crown Court is by way of a re-hearing. This court was provided with a full transcript of those proceedings. At the conclusion, Mr Wiltshire's appeal was refused but Mr Morton's appeal was allowed.

5. On 13 February 2022, Mr Wiltshire commenced these proceedings for judicial review.

Permission to apply for judicial review

6. The application for permission advanced two grounds:
   (i) The ruling contained inadequate reasons and justification to explain the decision to dismiss the appeal against conviction.
   (ii) The cogency and power of the defence evidence merited and required a detailed and full explanation as to why the points were rejected.

7. Permission was granted by Andrew Baker J on ground 1 only. In refusing permission on ground 2, he explained that he did not consider ground 2 to be arguable independently of ground 1 or to add anything to ground 1. The importance of this is that it made very clear that the only basis for challenge of the decision of the Crown Court was on the grounds of inadequate reasons. Mr Wiltshire did not seek to pursue a challenge on the grounds of irrationality. Mr Bridge submitted that the two grounds were, in a sense, linked because the more compelling the evidence in the claimant's favour, the clearer the reasons for rejecting it needed to be in order to be considered adequate. That, it seems to me, is a

further way of expressing the reason Andrew Baker J gave for refusing permission on ground 2 and reinforces the fact that this is a reasons challenge only.

Procedural issues

8. In the Acknowledgement of Service of the First Interested Party, the CPS, three procedural issues were raised none of which was, in the event, pursued and I refer to them only for completeness.

9. The first was that the CPS had not been properly served and that was accepted to be wrong.

10. The second was that the application, although made within 3 months, had not been made promptly because the reasons for the refusal of the appeal had been given on 16 November and the grounds advanced could have been formulated very shortly after that,

11. Had that issue been dealt with at the permission stage it would not have been open to the CPS to pursue it further at the substantive hearing except in the limited circumstances identified by the Court of Appeal in *R v Lichfield District Council* [2001] EWCA Civ 304 at [34] that is *"(i) if the judge hearing the initial application has expressly so indicated, (ii) if new and relevant material is introduced on the substantive hearing, (iii) if, exceptionally, the issues as they have developed at the full hearing put a different aspect on the question of promptness, or (iv) if the first judge has plainly overlooked some relevant matter or otherwise reached a decision per incuriam"* (per Sedley LJ).

12. That was not the position here – although mentioned in the Grounds of Resistance, the issue was neither addressed nor resolved by Andrew Baker J, although it might be inferred from his granting permission that he would have resolved it in the claimant's favour.

13. The explanation offered for the time taken to make the application was the time taken to obtain and review the transcript. In the particular circumstances of this case, I would have taken the view that that time was reasonable and, as it happened, Mr Jarvis, on behalf of the CPS agreed. The particular circumstances of this case were the need, at least on the claimant's case, to consider fully and carefully the reasons given. Even the best notes might have led to a misconceived application. That reflects the nature of this case and I emphasise that it should not be thought that awaiting the transcript will always be considered a reason to defer the commencement of proceedings.

14. The third objection was that the claimant had an alternative remedy that he ought to have sought, namely an appeal by way of case stated. The application must be made within 21 days and the inference was that the decision to seek judicial review was one taken in order to extend the time limited for challenge.

15. Under section 28 of the Senior Courts Act 1981, a decision of the Crown Court may be questioned by way of case stated on the grounds that it is wrong in law or in excess of

jurisdiction. It is an aspect of the application to the Crown Court to state a case for the opinion of the High Court that the application must specify the proposed question on which the opinion of the High Court will be asked (CPR Part 35.2(2)). In this case, no question of law arose in terms, for example, of the elements of the offence on which the decision of the Crown Court could be said to be wrong in law. The only respect in which it was argued that the decision was wrong in law, rather than in fact, was that it was inadequately reasoned.

16. It is, to my mind, fair to say that a reasons challenge has more of the nature of a challenge by way of judicial review than an appeal by way of case stated. I have considerable sympathy with the submission of Mr Bridge when he said that he would have struggled to specify the question on which the opinion of the High Court was to be asked. It would, arguably, have involved simply reciting the terms of the decision and then asking whether those were adequate reasons. Where the distinction between these two forms of challenge is blurred in this way, I would not have concluded that the potential availability of an alternative remedy was a bar to judicial review and nor would I have concluded that the judicial review route had been chosen as a means to extend the time limit for challenge. As I have said, however, these factors were recognised by the CPS and the objection was not pursued.

The law

17. In respect of the duty to give reasons, the claimant relied on the decision of the Divisional Court in *R v Harrow Crown Court, ex part Dave* [1994] 1 WLR 98. Having reviewed the authorities, Pill J held [at 106G] that when the Crown Court sits in its appellate capacity it must give reasons. At 107A to E, Pill J continued:

> *"The reasons need not be elaborate, but they must show the parties and if need be this court the basis on which the Crown Court has acted. The Crown Court judge giving the decision of the court upon an appeal must say enough to demonstrate that the court identified the main contentious issues in the case and how it resolved each of them."*

18. Pill J added that the reasoning required would depend on the circumstances. In some cases, it would be sufficient to say that the court preferred the evidence of one witness over that of another. In the case before the court, the defendant had been convicted of assault in a shop. There were two witnesses present at the time who had heard raised voices but seen nothing consistent with an assault. The complainant had attended hospital shortly afterwards but had not complained of an assault and there was no medical evidence of an assault. Pill J described this as compelling independent evidence called by the defence which cast doubt on the evidence of the complainant and a supportive witness. In that particular case, for the defendant to know the basis on which he prosecution case had been accepted involved "knowing the process by which the apparently powerful points in favour of the defence had been rejected." That is no doubt what lay behind the claimant's ground 2, that is, that the present case was one in which the defendant was entitled to know the basis on which the points in his favour had been rejected.

19. Mr Bridge also relied on the formulation of Tuckey LJ, in *R (McGowan) v Brent Justices* [2001] EWHC 814 (Admin):

> *"Justices do not have to state their reasons in the form of a judgment – reciting the charges, the evidence they have heard and all their findings of fact. The essence of the exercise in a criminal case such as this is <u>to inform the defendant why he has</u>*

been found guilty. That can usually be done in a few simple sentences." (emphasis added)

20. The position is, therefore, that the Court must give reasons for its decision; those reasons can be shortly stated; but they should be sufficient to enable the defendant to understand why he has been found guilty. As Pill J indicated in *ex p Dave*, the way in which the court will do that is by saying enough to demonstrate that the court has identified the main contentious issues and how it has resolved them. The extent to which the court must set out its reasoning on the resolution of those issues is case sensitive. It is not the case that the court must set out its findings on the evidence on each such issue with an analysis of how it has reached its conclusions on them, as if delivering a judgment. There may, however, be cases or specific issues on which a greater degree of reasoning needs to be set out. The case of *ex p Dave* provides an example of such a case where there is a direct conflict of evidence between two witnesses and supportive evidence for the account of one witness, yet that account is rejected.

The reasons

21. The hearing before the Crown Court was a re-hearing at which evidence was given by the following (i) Mr Wiltshire and Mr Morton; (ii) Mr Symonds, Ms Samuels, Ms Long, Mr Moon and Mr Last who were all in following vehicles; (iii) Mr Bond who was in lorry with Mr Morton; (iv) Ben Flynn who arrived at the scene shortly after the accident; (v) three expert witnesses, namely, PC Niall Fyfe for the prosecution, Paul Tydeman for Mr Wiltshire and Victoria Eyres for Mr Morton. The court also viewed the dashcam footage and, in giving the court's decision, the Recorder observed that they had found that footage very helpful.

22. The court set out in its judgment its conclusions on the evidence:

    (i) That Mr Wiltshire had activated his left hand indicator about 150m before the collision and, very shortly after, had also activated his beacons.
    (ii) That Mr Wiltshire positioned his lorry fully in the filter lane, although it was not necessary for him to do so.
    (iii) To carry out the left hand turn, Mr Wiltshire *"had to pull to the right first and it was a reasonable manoeuvre for him to carry out, if it was safe for him to do so."* (emphasis added).
    (iv) That Mr Wiltshire glanced in his mirrors prior to indicating left, prior to moving right and prior to the final move to the left.
    (v) That Mr Morton formed the view that the lorry was turning right and that that was a reasonable conclusion to draw from the positioning of the vehicle.
    (vi) That immediately before the collision Mr Wiltshire was travelling at 8 mph and Mr Morton at 33 mph.

23. Against that background, the court continued:
"In our view, the positioning of the vehicle fully in the feeder lane served to give the clear impression that Mr Wiltshire was intended to turn right. The lack of road signage indicating a left hand turn to the farm entrance and the uncommon manoeuvre that Mr Wiltshire intended to perform meant that it was incumbent upon him to ensure that his intended left hand turn was clearly a signal (sic) to other road users and that he must, so far as he can, see that those signals have been understood by other road users.

We conclude that Mr Wiltshire paid insufficient attention to the traffic behind him. Not only at the point of his manoeuvre but prior to this. He was aware there was traffic following him. He should not have committed to a manoeuvre, that he is pulling right and then left in one continuous movement, in circumstances which left him with insufficient time to properly check his mirrors [or] to properly assess the movement of the following traffic seen in those mirrors.

It was not open to him to continue with his movement on the basis that Mr Morton could perform hard braking to avoid the collision. In our judgment, if there was insufficient time to check his mirrors and makes a proper assessment to ensure his manoeuvre was safe, then he had the opportunity to slow down, to stop, to given himself more time for those mirror checks. We accept this was an error of judgment by Mr Wiltshire over a short period of time. Nevertheless in the circumstances we are satisfied, so we are sure, that Mr Wiltshire's driving fell below what would be expected of a careful and competent driver."

The claimant's case as to adequacy of reasons

24. I would draw the threads of Mr Wiltshire's case together as follows:
    (i) Before he began his manoeuvre, he turned on the left hand signal and he activated his beacons. It was accepted by the prosecution's expert witness that that was an appropriate use of the beacons.
    (ii) The report of Mr Tydeman included a tabular representation of the evidence from the tachographs in both vehicles. That showed that until about 5 to 6 seconds before the crash the distance between the two vehicles was consistent. It also showed from about 16 or 17 seconds before the crash, Mr Wiltshire had been slowing down and it was accepted by the Crown Court that Mr Wiltshire had ultimately slowed to 8.07 mph.
    (iii) It was agreed by the experts that this was "a textbook" manoeuvre. There was nothing wrong in Mr Wiltshire pulling into the filter lane in order to execute the left hand turn.
    (iv) It was accepted by the Crown Court that he had carried out 3 mirror checks before he undertook the manoeuvre. He started the manoeuvre to the right about 5 seconds before the crash – it would have taken about 3 seconds to check the mirrors before that. He glanced in his mirrors again before making the turn to the left. Nothing turns on the description of him "glancing" in his mirrors as that is what a driver does when concentrating on the road ahead and, in this case, the entrance he was turning into. When he glanced in his mirrors before making the move to the right, it was safe to commence the manoeuvre. In the time remaining to him, it was too late to do anything else other than complete the manoeuvre.

25. The thrust of Mr Bridge's submission was that (i) the reasons given for dismissing the appeal were internally contradictory and so did not inform the claimant of the reasons for his conviction and (ii) that, against the factual scenario set out above, adequate reasons had to address, and specifically address, why that version of the facts was wrong. It was submitted that the reasons did not do so.

26. These two elements were related. Taking the latter first, it was submitted that at the point Mr Wiltshire moved to the right, having checked his mirrors, there was a vehicle a safe distance behind him; there was no way he could have known that there was a risk that the driver of that vehicle would ignore his left hand signal and beacons; and he was now undertaking the manoeuvre and could not stop. The court's decision did not then enable

counsel to explain to Mr Wiltshire what he had done that amounted to carelessness and/or what he should have done differently when he approached the junction. If the Crown Court had concluded that Mr Wiltshire ought to have been able to assess the speed of Mr Morton's vehicle and, as I understood the submission, that he was not going to leave room for Mr Wiltshire's manoeuvre, the Court needed to have explained how it reached that conclusion, in order to give adequate reasons and enable Mr Wiltshire to understand the basis for his conviction.

27. The contradiction identified was not, in my view, properly characterised as a contradiction in the reasons. It was said to arise from the passage in which the Court said that it was a reasonable manoeuvre to carry out "if it was safe to do so". It was submitted that findings made by the court, as considered above, amounted to findings that it was safe to make the manoeuvre so that there was a contradiction between those findings and the finding of guilt. In other words, this was another way of making the submission that the necessary inference from the findings of the Crown Court was that the manoeuvre was a safe and proper one and that the Court had then failed to give adequate reasons for nonetheless concluding that Mr Wiltshire was careless.

Discussion

28. I have no hesitation in rejecting the claimant's submissions.

29. The key conclusion of the Crown Court was that the manoeuvre was a reasonable one to carry out "*if it was safe to do so"*. It is to my mind clear that the Court concluded that Mr Wiltshire was careless in that he did not adequately assess whether it was safe to do so.

30. Looking at the reasons given, it is clear that the Court considered that, in all the circumstances and particularly the move to the right fully into the filter lane (whether that was necessary or not), the burden was on Mr Wiltshire to satisfy himself that his signals and intentions had been understood. In fact, he paid insufficient attention to the vehicle following him and did not properly assess what that vehicle was doing. If he had insufficient time to make a proper assessment, he should have slowed further, and stopped, and checked.

31. In my judgment, those reasons were entirely adequate. This is not a case where any further elaboration of the reasoning was necessary to enable the defendant to understand the basis on which he had been found guilty. The Crown Court did not reject evidence that the manoeuvre was safe and no question of explaining why it had rejected that evidence arose. The evidence was of the steps Mr Wiltshire had taken prior to and when carrying out the manoeuvre. Whilst accepting the evidence as to what Mr Wiltshire had done, the Crown Court nonetheless concluded that he had not done what a careful and competent driver would have done to ensure it was safe to make the turn to the left. No more explanation was required. It follows that any further interrogation of the validity of the Crown Court's reasons goes beyond a challenge on the grounds of adequacy of reasons and into the realms of rationality.

32. If it were appropriate to go further, the tachograph evidence that the claimant relies on shows that at the point that he started to slow down the lorry behind him was travelling

at nearly 50 mph. 8 seconds before the crash, the lorry was continuing at a similar speed and not responding to Mr Wiltshire's signals or reduction in speed. It is by no means difficult to understand or explain to Mr Wiltshire why the Court, therefore, considered that a careful and competent driver would have checked again that his intentions had been understood before moving back into the path of the oncoming lorry. It is also relevant that the Court considered the dashcam footage very helpful. As I have said above, it shows the tipper moving into the chevrons immediately before the filter lane before entering that lane. The tipper is more or less straight and then turns left. What can be seen in this footage is consistent with the Court's conclusions.

33. Although it was not the focus of the submissions to this court, the Statement of Facts and Grounds also relied on the argument that the Crown Court's finding of guilt were inconsistent with the way in which the prosecution had opened the case. In giving permission, Andrew Baker J expressly stated that he regarded that as being within the scope of ground 1.

34. It is right that, in opening the case to the Crown Court, prosecution counsel expressly relied on Mr Wiltshire's failure to check his mirrors before making the left hand turn and his failure to signal left. As Mr Bridge submitted, the court found as a matter of fact both that Mr Wiltshire had checked his mirrors and had signalled left. That does not, however, assist the claimant's case.

35. The issue for the Crown Court was whether it was sure that Mr Wiltshire had driven in a careless manner within the meaning of the statute. The court was not constrained by how the prosecution had opened the case in coming to its conclusion on that issue and was not precluded from reaching the conclusion that it did that Mr Wiltshire's check of his mirrors was inadequate to ensure that his manoeuvre was safe. In any event, in closing counsel identified the issue as whether Mr Wiltshire had checked his mirrors properly and, as I have said, the court concluded that he did not.

36. It was also part of the claimant's case that the court gave inadequate reasons for allowing the appeal of Mr Morton while dismissing that of Mr Wiltshire. Mr Bridge submitted that the Crown Court's decision was, in a sense, a single judgment and that if Mr Morton failed to observe and/or react to the left hand signal and beacons warning of a manoeuvre, it is not possible to explain to Mr Wiltshire why his appeal was dismissed and Mr Morton's was allowed. It followed, in his submission, that the reasons given for dismissing Mr Wiltshire's appeal were inadequate.

37. That does not, however, follow. The magistrates were sure that both Mr Wiltshire and Mr Morton were guilty of careless driving. Mr Bridge's argument is one that the reasons for Mr Morton's acquittal on appeal were inadequate. That is not material to the adequacy of the reasons for dismissing Mr Wiltshire's appeal. It is fundamental that the guilt or innocence of each defendant must be considered separately. However much the claimant may feel that the accident was caused by Mr Morton's failure properly to interpret his signals and intentions and to slow down appropriately that is not relevant to the Court's conclusion as to the respects in which Mr Wiltshire was careless.

38. For all these reasons, this claim for judicial review fails.

Lord Justice Dingemans:

39. I agree