

SCOTTISH CRIMINAL CASES REVIEW COMMISSION
STATEMENT OF REASONS UNDER SECTION 194D (5) OF THE
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

1. In the exercise of its functions under Part XA of the Criminal Procedure (Scotland) Act 1995, as inserted by section 25 of the Crime and Punishment (Scotland) Act 1997, the Scottish Criminal Cases Review Commission ('the Commission') has considered the application of Stephen Richard Bateson ('the applicant') for review of his conviction and sentence.
2. The Commission has fully examined the matters raised in the applicant's case. The outcome of these enquiries is that the Commission does not believe that a miscarriage of justice may have occurred in respect of the applicant's conviction and sentence. The Commission is therefore not minded to refer the applicant's case to the High Court.
3. The Commission will consider any further submissions in the applicant's case, based on the present grounds of review, before reaching its final decision. All such submissions should reach the Commission within 21 days from the date of the letter accompanying this statement of reasons.

Details of Conviction

Name of convicted person: Stephen Richard Bateson

Offence: Contravention of Road Traffic Act 1988, section 3
(Careless driving)

Court: Dundee Sheriff Court

Date of conviction: 2 March 2005

Sentence: Fined £300 + 7 penalty points

Background

4. The applicant appeared for trial at the Sheriff Court in Dundee on 2 March 2005, before Sheriff A G McCulloch. The charge which he faced was in the following terms (deletions in brackets and amendments in bold):

*"on 15 June 2004 on a road or other public place, namely Kingsway West, Dundee, you STEPHEN RICHARD BATESON did drive a mechanically propelled vehicle, namely motor car registered number SK52 DJO dangerously in that, (near to the junction with Liff Road) **at a point between Swallow roundabout and Myrekirk Road roundabout** you pulled out into the path of motor cycle registered number Y186 VMW, forcing Russell William Moir to brake to avoid a collision, and near to the junction with Myrekirk Road, you overtook motor car, registered number SA53 HVZ, on its nearside then swerved violently into its path, forcing Peter Alexander Gordon Carnegie to brake and swerve to av (sic) avoid a collision, causing his vehicle to collide with the central reservation, (and,*

*near to the junction with Strathmartine Road, you overtook motor cycle, registered mark Y186 VMW, on its nearside)
CONTRARY to the Road Traffic Act 1988, Section 2 as amended"*

Crown Case

5. The Crown led evidence from three civilian witnesses who spoke to the standard of the applicant's driving at the time in question, namely Russell William Moir, Peter Alexander Gordon Carnegie and Catherine Ann Macgregor. The witnesses Moir and Macgregor spoke of being aware of the applicant's vehicle indicating and pulling out straight in front of the witness Moir's motor cycle, causing the witness Moir to break sharply.

6. In addition, all three witnesses spoke to the applicant's vehicle passing the witness Carnegie's vehicle on the nearside, then swerving out to pass a stationary van. This caused the witness Carnegie to brake and swerve his vehicle, the wheel of which hit the kerb of the central reservation.

7. The witnesses Moir and Macgregor indicated that the witness Moir thereafter signalled to the witness Carnegie to check if he was alright. The witness Carnegie indicated that he had acknowledged these witnesses when they passed him.

8. All three witnesses identified the applicant.

9. A joint minute of agreement was submitted in evidence. This confirmed that the applicant was asked who was driving his car at the time the incident took place, in terms of section 172 of the Road Traffic Act 1988. He gave the following reply:

"It was a long time ago but I guess it would have been me. No-one else uses the car."

Defence Case

10. The applicant gave evidence in his own defence. He accepted that he had been driving the vehicle libelled in the charge on the day in question. He stated that, close to Myrekirk Road roundabout, he overtook a slow moving vehicle, deeming it safe and having signalled to do so. A car in the outside lane came up behind him, and flashed its lights, to which he did not respond. He pulled back into the inside lane, at which point the driver of the other vehicle also pulled in abruptly in front of him and applied his brakes. The applicant claims that he responded by slowing his vehicle. He noted a motorcycle which came alongside his car. The driver pointed to the other car, but the applicant was not sure what the gesture meant so ignored it. He attempted to overtake the car, which sped up causing the vehicles to drive side by side. He resisted the temptation to exceed the speed limit. He denied the Crown witness's version of events took place.

Verdict and sentence

11. The applicant was found guilty of the alternative charge of contravening section 3 of the Road Traffic Act 1988 ("Careless driving") as amended. He was fined £300 and had 7 penalty points imposed.

Appeal

12. The applicant lodged an application for stated case in relation to his conviction, which was in the following terms:

"a) The Sheriff made the assumption, without any evidence, that I was tired and so failed to see any of the incidents alleged by the prosecution witnesses.

b) The chief prosecution witness made an egregious error during his evidence. When challenged he merely said he had been confused. This did not prevent him from remembering 2 vehicle registration numbers, however.

c) The identification process in court is flawed and contravenes my human rights. One witness, who had never seen me in her life before, claimed to be able to identify me.

d) A Notice of Intended Prosecution was not served, presumably because an accident was alleged to have occurred. However, no tangible evidence of an accident was presented to the court."

13. This application was lodged after the statutory time limit had elapsed. The applicant was informed, on 12 April 2005, that he was required to apply to the High Court for an extension of time in which to lodge the appeal.

14. On 13 December 2005, the applicant wrote to the High Court asking that the matters in his application for a stated case be considered, along with further matters which he claimed demonstrated that his right to a fair trial under article 6 of the European Convention on Human Rights had been breached. He claimed that the dock identification which took place at his trial was unfair in terms of that article. He further claimed that two important pieces of evidence had not been disclosed to him prior to his trial taking place. These were that one of the Crown witnesses had claimed that a broken-down van at the locus had contributed to the accident, and that another witness had initially reported an additional incident of overtaking on the inside lane. The applicant claimed that this information would have been of importance when considering whether to challenge the credibility of these witnesses. He further claimed that the precognition of one of the witnesses was different from the evidence which she gave in court, in that she failed to mention the fact that a collision had taken place.

15. The applicant's request for an extension of time was considered on 23 December 2005, by Lord Nimmo-Smith, when it was refused for the following reason:

"The appellant was informed by letter dated 12th April 2005 of the need to make an application such as the present. The manner in which, in that knowledge, he has chosen to make use of the intervening time does not amount to cause shown for the lateness of his application."

The Commission's Review

16. In reaching its interim decision on the applicant's case the Commission has considered the following: the application form submitted to the Commission, as well as further submissions made in correspondence which the applicant has sent to the Commission; a copy of the complaint, joint minute of agreement and minutes of procedure from the

applicant's trial; the client file held in relation to the applicant's case by Messrs George Mathers & Co, solicitors in Aberdeen; information provided to a legal officer from the Commission by Mr T Cruickshank, solicitor; a copy of the police report and copies of police witness statements in relation to the applicant's case; and information provided by Sheriff A G McCulloch, who presided over the applicant's trial, in correspondence entered into with the Commission.

17. In the application and subsequent submissions, the applicant raised a number of grounds which he considered justified his case being referred to the High Court. The grounds and the Commission's views on these follow.

Conviction

Equality of arms

18. The applicant submits that his solicitor was not provided with the statements of the Crown witnesses prior to his trial taking place. He submits that the information which was provided was too brief to have been of any real use. In particular, the applicant submits that his solicitor was not aware of the witnesses' position that there had been a broken-down van at the scene of the incident. He claims that his own investigations have undermined this allegation. He also indicates that the witness Carnegie's police statement mentions damage to his vehicle, but that there were no photographs or measurements taken in relation to this, and nothing made of it in court, despite an assertion that a collision had taken place. He also claims that he was accused of four separate acts of careless driving in court, despite the fact that the charge which he faced only libelled three such incidents. He submits that, as a result, his solicitor, Mr Cruickshank, was unprepared for "a rigorous examination of what turned out to be rather complex evidence".

19. As part of its investigation into the applicant's case, the Commission has reviewed the client file held in relation to the applicant's case by Messrs George Mathers and Co. It notes that the applicant is correct in his assertion that the statements of Crown witnesses were not made available to his solicitors prior to his trial. It has also taken into account the decisions of the Judicial Committee of the Privy Council in the cases of *Holland v HMA* 2005 SCCR 417 and *Sinclair v HMA* 2005 SCCR 446, in which it held that the Crown have a duty to disclose to the defence evidence in their possession which would tend to exculpate the accused, or would be likely to be of material assistance in the preparation or presentation of his defence, and that a failure to do so would be an infringement of an accused's right to a fair trial in terms of article 6(1) of the European Convention of Human Rights and could result in a conviction being overturned.

20. Nevertheless, the Commission notes that it has subsequently been established that not all failures to disclose relevant information will result in a miscarriage of justice. In the case of *Kelly v HMA* 2006 SCCR 9, the High Court held that, in determining whether such a failure was incompatible with an accused's right to a fair trial in terms of article 6(1), the critical issues included the materiality of the statement and the nature and extent of any prejudice suffered, the obligation being to disclose anything that would be likely to be of material assistance to the proper preparation or presentation of the accused's defence. In that case it was held that a failure to disclose previous statements of a witness did not violate the appellant's article 6 right to a fair trial, where the purported discrepancy identified in a statement was limited and would not have undermined the witness's credibility or reliability to any degree.

21. In the applicant's case, the Commission notes that the solicitor who represented him at his trial, Mr Cruickshank, was able to obtain a summary of the evidence of the witnesses Moir and Carnegie prior to the trial commencing.

22. In relation to the witness Carnegie, the summary provided by the Crown confirmed that he would speak to the fact that he was driving his car in the outside lane at the locus, and noticed a motor cycle close to him in that lane, and a blue Citroen motor vehicle in the near side lane; that ahead of him there was a vehicle, possibly a "Gas Board van", parked partly on and partly off the kerb, with its hazard lights illuminated; that the Citroen overtook him on the inside lane, and cut out quickly causing Mr Carnegie to brake and swerve, leading to his offside wheel coming into contact with the kerb of the central reservation, damaging this wheel; that he believed he could identify the applicant; and that he had noted the registration number of the applicant's car, as well as that of the motorcycle.

23. In relation to the witness Moir, the summary confirmed that this witness would speak to the fact that he was driving a motor cycle at the locus, with his girlfriend, the witness Macgregor, riding pillion; that he was in the outside lane and noticed a Citroen motor vehicle coming up behind a slow moving vehicle, and thereafter pulling out suddenly and with very little warning, causing Mr Moir to brake; that the Citroen then negotiated a roundabout and, while in the inside lane, went towards a Vauxhall motor vehicle; that the Citroen came towards a vehicle which was half on and half off the pavement with its hazards illuminated, and which was stationary or moving very slowly, before pulling out suddenly in front of the Vauxhall, which had to swerve and brake to avoid a collision.

24. According to the applicant's submissions the witness Macgregor provided his representatives with a precognition, and he has provided a summary of that precognition. She indicated that she was riding pillion on the witness Moir's motor cycle at the locus at the time of the incident. She noted a Citroen Picasso motor vehicle in the nearside lane, which suddenly pulled out, without indicating, to the outside lane, causing the witness Moir to brake; at the next roundabout the Citroen overtook a dark blue car on the nearside, causing the driver of the other car to brake suddenly.

25. The Commission notes that the applicant has investigated the claims made at trial that the vehicle which had broken down was a "Gas Board van", a claim which also appeared in the statement of the witness Carnegie. The applicant claims that Scotland Gas Networks (formerly Transco) have confirmed that they have no reports of their vans having broken down at the locus at that time. Nevertheless, the Commission does not consider this information could have materially undermined the credibility of the witness Carnegie. In his statement to the police he describes the vehicle as "a Gas Board van, **or similar**" (emphasis added), and does not therefore state unequivocally that it was such a van. Both of the other Crown witnesses also spoke to the presence of a van, which was stationary and had its hazard lights illuminated, at the locus, and the Commission does not consider the applicant to have provided any information which could fundamentally undermine that claim. Indeed the applicant's own investigations suggest that a white van was reported as causing an obstruction 40 minutes after the incident was alleged to have taken place. In any event, the applicant has not put forward any submissions which would suggest that had the witness Carnegie's statement that the stationary vehicle may have been a "Gas Board van" been known to his defence representatives, this would have had a material bearing on the presentation of his defence.

26. Similarly, the fact that the witness Carnegie claimed that a wheel from his car had been damaged does not appear to the Commission to have been material to the applicant's defence. The charge which he faced contained no allegation of having caused damage to the witness's vehicle. In his statement to the police the witness describes noticing that his "tyre was slightly damaged". The damage incurred was therefore minimal. Given this fact, and the fact that the damage did not feature in the charge which the applicant faced, the Commission does not consider the failure of the police to photograph it denied the applicant access to information which was material to his defence.

27. The Commission notes that the fourth incident of careless driving which the applicant claims was led in evidence against him concerns a further act of overtaking the witness Moir's motorcycle while in the inside lane. This allegation did not form part of the charge of which the applicant was convicted. According to the applicant's summary of the evidence provided by each witness, the allegation appears only to have been made by the witness Macgregor. While this incident is not mentioned in this witness's police statement, the Commission does not consider that the failure to disclose this statement resulted in the applicant being denied a fair trial. As it did not appear in the police statement of the witness Macgregor, it was only during the trial itself that the applicant's solicitor would have found out about this allegation. It appears from the submissions put forward by the applicant, that the witness Moir had already given evidence by that stage of the trial, and that his evidence did not correspond to the witness Macgregor in relation to this fourth allegation. A discrepancy in the Crown case was therefore clearly before the sheriff. The Commission does not consider that the discrepancy in the witnesses' evidence would have been added to in any material way had the applicant's solicitor been able to refer the witness Macgregor to her previous statement. Moreover, it notes that the allegation of the applicant having overtaken the witness Moir's vehicle in the inside lane of the carriage-way was ultimately deleted from the charge of which the applicant was convicted. The significance of the discrepancies in the witness's testimony in terms of the credibility of the Crown case is considered generally at paragraphs 36 to 45 below.

28. Having considered the information available, the Commission does not agree with the applicant's submission that his solicitor was unprepared for the cross-examination of the Crown witnesses. Contrary to these submissions, the Commission's analysis of the summary which was provided by the Crown suggests that Mr Cruickshank would have been aware of the allegation that a vehicle had broken down at the locus and that the witness Carnegie's vehicle had been damaged, albeit slightly, as well as the evidence which was likely to be given about the manner of the applicant's driving. The statements of the Crown witnesses do not contain any material information about which the applicant's solicitor was not aware. The Commission does not accept that the applicant's case involved particularly complex issues, or that photographs and measurements would have been of material assistance in his defence. For all of these reasons, the Commission does not consider that there may have been a miscarriage of justice in relation to the Crown's failure to disclose evidence material to the applicant's defence.

Insufficient evidence and independence of witnesses

29. The applicant refers to the fact that the Crown case depended "solely" on the evidence of 3 witnesses, and that no other evidence was presented. He submits that it was crucial that the witnesses' independence was verified, as well as their claims that a

van had broken down at the locus. He suggests that the police ought to have carried out the relevant checks in this regard.

30. The Commission considers that the applicant's submissions in this regard suggest that there is no way of knowing whether the Crown witnesses conspired to falsify the allegations made against him. The Commission considers these submissions to be entirely without foundation. The police were not under a duty to investigate the independence of the witnesses in the applicant's case, where there was no reason to doubt same. The adversarial nature of the criminal justice system in Scotland means that it was open to the applicant to instruct his solicitors to carry out investigations in this regard, and to present this as a line of defence at trial. However, the applicant has presented no evidence upon which to base his claims in relation to this matter and there is no reason to believe that this would have been a persuasive argument if presented in his defence. The issue of the van which the witnesses spoke to seeing at the locus was dealt with at paragraphs 18 to 28 above. The applicant has not presented the Commission with any evidence which could undermine the witnesses' accounts in relation to same. The criminal justice system in Scotland only requires evidence from two independent sources to corroborate a case and convict an accused. In the applicant's case evidence was led from three such sources. The applicant having failed to specify a reason for doubting the independence of the relevant witnesses, and there having been sufficient evidence led by the Crown, the Commission does not accept that the submissions put forward suggest that there may have been a miscarriage of justice.

Dock Identification

31. The applicant submits that the Crown ought to have held an identification parade prior to his trial, rather than relying on the Crown witnesses' dock identification. He claims that this was important given the sheriff's comments that the versions of events presented by both sides were "so disparate that they might have taken place on different days". He further indicates that the witness Macgregor was hesitant in initially identifying him, and only vaguely pointed towards him until pressed by the procurator fiscal depute.

32. In considering the applicant's submissions in relation to this matter, the Commission has considered the decision of the Judicial Committee of the Privy Council in the case of *Holland* (referred to at paragraph 19 above) regarding dock identification. In that case, the broad submission that evidence derived from a witness identifying the accused in the dock was, by its nature, so unfair as to be incompatible with the appellants right to a fair trial under article 6(1) of the European Convention of Human Rights was rejected. Instead, the Judicial Committee indicated that in each case where an issue arises under article 6(1) due to the introduction of evidence, the question to be asked is whether this has prevented an accused from having a fair trial.

33. The Commission does not consider that the circumstances of the applicant's case suggest that the use of dock identification resulted in his being denied a fair trial. The issue of identification does not appear to have been contested at the applicant's trial. The applicant himself accepted having driven a Citroen motor vehicle bearing the registration spoken to in evidence at the locus on the date of the offence. He accepted being involved in an incident involving another car and a motor cycle, albeit his version of events differed considerably from that of the Crown witnesses. The issue at the heart of the applicant's case was not, in the Commission's view, whether he had been the driver of the motor vehicle in question, but

rather whether he had driven the vehicle in the manner alleged. The comment attributed to the sheriff is understandable if viewed in this context.

34. Moreover, the evidence linking the applicant with the crime did not consist solely in his dock identification. It was a matter of agreement that he was the registered keeper of the vehicle with registered number SK52 DJO, which was identified as the vehicle involved in the incident. It was also agreed that, when asked who had been driving the vehicle at the locus on the date of the offence, he stated:

"It was a long time ago but I guess it would have been me. No-one else uses the car."

35. In these circumstances the Commission does not consider the applicant's identification to have been in dispute at the trial, and does not consider that the Crown's reliance on dock identification may have resulted in a miscarriage of justice.

Unreasonable verdict

36. The applicant submits that the sheriff was not justified in believing the Crown case beyond all reasonable doubt, as there were too many instances of improbable evidence. He has submitted a detailed analysis of his recollection of the Crown witnesses' testimony, highlighting discrepancies in the exact location of the incident, the number of times he was alleged to have overtaken the witnesses' vehicles and whether and when the witness Moir signalled to the witness Carnegie. He has calculated the distance between the vehicles of the witnesses, based on their testimony, and suggests that it is unlikely that the witness Moir and Macgregor could have seen what they alleged, given the number of cars which could have been in front of them.

37. The applicant further submits that there was no basis upon which the sheriff was entitled to conclude that the applicant must have been tired at the time of the offence.

38. In considering this ground of review the Commission has taken into account a letter from the applicant dated 15 March 2006, in which he outlines, in some detail, the evidence which he recalls being presented at his trial. It has also taken into account a table submitted by the applicant headed "Analysis of Witness Statements", in which the applicant contrasts the accounts given by the witnesses and presents detailed criticism and comment in relation to same.

39. The Commission also contacted Sheriff A G McCulloch, in order to obtain his view of the applicant's submissions. His position was that the Crown witnesses gave evidence in support of the complaint which had been libelled against the applicant, which he believed. He did not accept the evidence which the applicant gave in his defence. He did not consider that the standard of driving spoken to by the Crown witnesses amounted to dangerous driving, in terms of section 2 of the Road Traffic Act 1988, but did consider it amounted to careless driving, in terms of section 3 of that Act. He confirmed that he had stated that the applicant was perhaps tired, but felt that this was an inference he was entitled to make, given the applicant's evidence that he had driven non-stop from Bradford on the day of the offence. He made clear that it was the applicant's standard of driving, and not his tiredness which resulted in the conviction.

40. The Commission also spoke to the applicant's trial solicitor, Mr Cruickshank. He recalled that the Crown witnesses had given evidence which supported the charge labelled against the applicant. He was of the view that the decision of the sheriff to convict the applicant was reasonable, given the evidence which was led against him.

41. The Commission notes that issues of credibility and reliability are primarily a matter for a trial judge's consideration, and that a decision on such matters will not be interfered with unless it can be said that the verdict reached was unreasonable in all of the circumstances. It is further noted that the Crown witnesses gave evidence in support of the terms of the charge faced by the applicant, and that, in the Commission's view, there can be no doubt that they were all referring to the same incident in which the standard of the applicant's driving was called into question. Having appeared in the witness box, their credibility and reliability could be assessed by sheriff.

42. As a general point, it is perhaps worth emphasising that in any case involving the evidence of several eyewitnesses, it is rare to find a concurrence of testimony in respect of each and every element of the incident observed. Different witnesses may view an incident at different stages, or at the same stage but from different positions; they may be offered only a fleeting glimpse of what has taken place; or may be asked to provide their initial accounts some time after the incident. That there may exist inconsistencies between the accounts given by several witnesses in the applicant's case is therefore not surprising, and not a matter which, in itself, might persuade the Commission that a miscarriage of justice may have occurred. What is important in the applicant's case is not whether each witness was capable of giving the precise same account as the other, but rather that on significant matters the witnesses in question were clear.

43. The Commission has considered the alleged discrepancies highlighted by the applicant, but does not believe they are sufficient to refer his case on the basis of an unreasonable verdict having been returned. The differences highlighted by the applicant relate to details such as the exact distances spoken to by witnesses, or slight variations in the sequence of events. However, these difference must be assessed against the fact that all three witnesses spoke to the applicant's vehicle pulling out in front of the witness Carnegie's car, due to the presence of a van on the inside lane, causing the witness Carnegie to take evasive action, and the fact that the witnesses Moir and Macgregor spoke to the applicant performing a similar manoeuvre in front of the witness Moir's motor cycle. The discrepancies highlighted by the applicant are undoubtedly of relevance to the witnesses' credibility and reliability but they are not, in the Commission's view, decisive in that regard. The sheriff having presided over the applicant's trial would have been aware of any discrepancies, but was, nevertheless, entitled to accept the evidence of the Crown witnesses as to the essential matters of the charge.

44. The Commission agrees with the sheriff's view that the inference that the applicant may have been tired at the time of the incident was one which he was entitled to take. The applicant's position was that he had travelled from Bradford, a distance of 275 miles according to his own evidence, without stopping at all, either for a rest or to refuel his car. It is not unreasonable to infer that someone undertaking such a significant journey without a break may have been tired. In any event, the sheriff has made clear that it was not this factor, but the standard of driving exhibited by the applicant, as described by the Crown witnesses, which was decisive in his conviction.

45. For the reasons outlined, the Commission does not consider that the submissions put forward by the applicant suggest that there may have been a miscarriage of justice due to the

verdict returned by the sheriff being one which no reasonable sheriff, having instructed himself correctly on the law, was entitled to return.

Sentence

46. The applicant submits that the fine and number of penalty points imposed upon him is severe in comparison to other recent cases. He refers to a case involving a charge of causing death by careless driving in which the accused received a £200 fine and 7 penalty points. He highlights the fact that no damage and no injuries were alleged to have occurred as a result of his driving.

47. The Commission notes that the penalties which can be imposed upon an individual convicted of a contravention of section 3 of the Road Traffic Act 1988 include a fine of up to £2500, disqualification from driving, and an obligatory endorsement of 3 – 9 penalty points. It has reviewed the sentencing practice of the Scottish courts for similar offences, and notes that the level of sentence imposed upon an individual is not dependent exclusively on any damage or injury caused, but rather on the standard of driving exhibited. It also notes that there a number of examples of cases where an individual has received an equivalent or, in some instances, higher sentence for a contravention of section 3. Having regard to the standard of driving of which the applicant was convicted, the sentences which the sheriff was entitled to impose, and the sentencing practice of Scottish courts in relation to similar offences, the Commission does not accept that sentence imposed upon the applicant was beyond the range of appropriate disposals available. It does not consider that the submissions put forward suggest that there may have been a miscarriage of justice.

Conclusion

48. Based on the content of this statement of reasons, the Commission does not believe that a miscarriage of justice may have occurred in respect of the applicant's conviction and sentence and accordingly is not minded to refer his case to the High Court. As indicated, the Commission will consider any further submissions in the applicant's case, based on the present grounds of review, before reaching its final decision. All such submissions should reach the Commission within 21 days from the date of the letter accompanying this statement of reasons.

Scottish Criminal Cases Review Commission
October 2006