



Scottish Criminal Cases  
Review Commission

Under the Criminal Procedure (Scotland) Act 1995 s194D(5)(b)

---

## Stage 1

# Statement of Reasons

---

28 August 2020

For a decision not to make a reference to the High Court of Justiciary in the case of:

Applicant:	Stephen Richard Bateson
Case Number:	2780
Date of Birth:	[REDACTED]
Offence:	Contravention of section 3 of the Road Traffic Act 1988
Court:	Dundee Sheriff Court
Date of Conviction:	2 March 2005
Sentence:	Fine of £300 and 7 penalty points
Nature of Review:	Conviction



INVESTOR IN PEOPLE



HAPPY TO TRANSLATE

---

## Grounds of Review

This is the ground of review as the Commission understands them

---

The applicant believes that there is a requirement in Scots law that eye-witnesses must be independent from each other: in the sense that they must not be known to each other.

Three eye-witnesses spoke to the quality of his driving: Mr Carnegie (the car driver), Mr Moir (the motorbike rider) and Ms Macgregor (the motorbike pillion rider). Mr Carnegie and Mr Moir were asked during trial whether they knew each other and answered in the negative. The applicant accepted that the requirement for independence is met as between these individuals and accordingly that the sheriff was entitled to convict him in respect of his actions as spoken to by both these witnesses. However, as Mr Moir and Ms Macgregor were in a relationship, they were not independent from each other and he ought not then to have been convicted of his actions as spoken to only by these witnesses.

---

## Reasons for Refusal

The Commission did not accept this case for a stage 2 review because:

---

### Previous application

The Commission notes that the applicant applied to it in relation to this conviction on 10 January 2006. He applied then in respect of conviction and sentence. That application was refused after a full review for the reasons set out in the October 2006 statement of reasons and the March 2007 supplementary statement of reasons. One of his previous grounds for review was addressed under the heading of "Insufficient evidence and independence of witnesses". The applicant submitted then that the witnesses' independence ought to have been verified, as should their claims that a van had broken down at the locus. He submitted that the police ought to have made checks in this regard.

The Commission took the view then that there was no foundation to believe that the Crown witnesses had conspired to falsify the allegations. The Commission noted too there was no duty on the police

---

to investigate the independence of the witnesses but it would have been open to the applicant to instruct his solicitor to investigate the matter. In addressing the applicant's submission the Commission noted, "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" (per paragraph 30, October 2006 statement of reasons). In the March 2006 supplementary statement of reasons, the Commission further observed that the applicant's own investigations "do not support his claims of collusion" (per paragraph 25).

#### Current application

In terms of section 194C of the Criminal Procedure (Scotland) Act 1995, the Commission may refer a case to the High Court only if it believes:

- a) a miscarriage of justice may have occurred; and
- b) it is in the interests of justice that a reference should be made.

In other words, before the Commission may refer a case, it must be satisfied that both parts of the statutory test are met.

The Commission has addressed below whether it is in the interests of justice at this time to refer the applicant's case to the High Court for determination.

The fact that Mr Moir and Ms Macgregor shared a personal relationship was known throughout the proceedings. The applicant did not raise this particular point in his previous submission and may, the Commission believes, have misunderstood its position as set out in the October 2006 statement of reasons. The aforementioned reference to "independent sources" could have been phrased "separate sources" as may properly be implied by the reference to "three such sources".

For the avoidance of any doubt, the law is stated clearly at paragraph 24-69 of Renton & Brown's *Criminal Procedure*:

*"By the law of Scotland, no person can be convicted of a crime or a statutory offence, except when the*

---

*Legislature otherwise directs, unless there is evidence of at least two witnesses implicating the person accused with the commission of the crime or offence with which he is charged.”<sup>1</sup> ...*

*“The basic requirement is that the crucial features of an offence, the *facta probanda*, i.e. the fact that the offence was committed and that it was committed by the accused, must be established by evidence from at least two sources.”<sup>2</sup>*

No reference is made to “independence”.

The kind of independence suggested by the applicant is not a legal requirement and his current application is therefore ill-founded.

For this reason, the Commission does not consider that it would be in the interests of justice to refer the applicant’s case to the High Court for determination, and has, accordingly, decided not to accept this application for a Stage 2 review of conviction.

---

<sup>1</sup> *Morton v HMA* 1938 JC 50 at 55. See also Dickson on Evidence, para. 1807: *Lockwood v Walker* (1909) 6 Adam 124; *Harrison v Mackenzie*, 1923 JC 61; *Townsend v Strathern* 1923 JC 66

<sup>2</sup> *Smith v Lees* 1997 SCCR 139

## Frequently Asked Questions

### **Who did the Commission send this to?**

*If you told us that you have legal representatives, we've also sent a copy to them.*

### **Will the Commission make information about your case public?**

*No, we won't make information about your case public.*

### **You don't agree with the decision. Who can you speak to about this?**

*We'd suggest that you take legal advice. Our legal officers aren't allowed to discuss the Board's decision with you.*

### **Can you apply again?**

*Yes, you can. However, if your application doesn't raise any new matters, it's unlikely that we'll accept it for a stage 2 review.*

### **If the Commission has told you that you can still lodge an appeal, how can you do this?**

*We'd suggest that you speak to a solicitor with experience in appeal work. If you don't want to speak to a solicitor, Justiciary Office (tel: 0131 240 6909 (solemn)/0131 240 6912 (summary)) may be able to explain the procedure to you.*

### **If the Commission has told you that your grounds of review aren't "stateable", what does it mean?**

*We can't see any identifiable ground that might persuade the High Court that a miscarriage of justice may have occurred.*

### **What information did the Commission take into account in reaching its decision?**

*Usually, we consider at this stage any documents submitted with your application and the appeal/court papers.*