

2DS 2025/19

**IN THE HIGH COURT OF JUSTICE IN THE ISLE OF MAN
STAFF OF GOVERNMENT DIVISION**

Between:

GARRY STEPHEN WHITE

and

HIS MAJESTY'S ATTORNEY GENERAL on behalf of the King

Appellant

Respondent

Constitution of the court:

Judge of Appeal Cross KC
Acting Deemster Hopmeier

**Judgment of the court
delivered on 11 February 2026**

INTRODUCTION

1. This is an appeal pursuant to section 103(1)(b) of the Summary Jurisdiction Act 1989 [the '1989 Act']. The Appellant, Garry White, seeks to appeal a decision of the Summary Court of 30 June 2025 when he was convicted of an offence of driving his motor vehicle dangerously on 17 August 2024 on the Mountain Road.
2. We heard the appeal on 10 January 2025. We allowed the appeal and remitted the matter to the Magistrates to be retried. This is the judgment in the case.
3. Before we embark upon the judgment proper, we should indicate our views as to the procedure which brought this case to the Staff of Government Division. The right to appeal to this court is set out in section 103 of the 1989 Act. Section 103 is set out below in its entirety:

"Right of appeal against conviction or sentence

- (1) *A person convicted by a court of summary jurisdiction may appeal to the High Court —*
 - (a) *if he pleaded guilty, against his sentence;*
 - (b) *if he did not, against the conviction or sentence or both.*

- (2) *A person sentenced by a court of summary jurisdiction for an offence in respect of which a probation order, has been previously made against him may appeal to the High Court against the sentence.*
 - (3) *A person against whom a probation order or an order for the payment of costs has been made by a court of summary jurisdiction may, with the leave of that court, appeal to the High Court against the order.*
 - (4) *In this section "sentence" includes any order made on conviction by a court of summary jurisdiction except —*
 - (a) *an order under section 3 of the Cruelty to Animals Act 1997, and*
 - (b) *an order made in pursuance of an enactment under which the court has no discretion as to the making of an order in the terms thereof".*
4. The section allows for an Appellant aggrieved by either sentence or conviction to appeal to this **Division** as of right. No permission is required. This position can be contrasted with the position in England and Wales which, by virtue of section 108 of the Magistrates' Court Act 1980 [the '1980 Act'], allows appeals as of right to the **Crown Court**. Section 108(1) is set out below:

"Right of appeal to the Crown Court

- (1) *A person convicted by a magistrates' court may appeal to the Crown Court —*
 - (a) *if he pleaded guilty, against his sentence;*
 - (b) *if he did not, against the conviction or sentence".*
5. There is no direct right of appeal from the Magistrates' Court in respect of conviction and/or sentence to the Court of Criminal Appeal Division. The England and Wales procedure is governed by a combination of the 1980 Act, the Senior Courts Act 1981 and the Criminal Procedure Rules, which allow for a full rehearing before the Crown Court. In the Island the Court of General Gaol Delivery is completely bypassed and the right of appeal lies to the Staff of Government Division instead of what would be the alternative to the above, a Deemster sitting with two Justices, as it is in England and Wales where the court consists of a Recorder or Judge sitting with two lay justices.
6. A useful starting point in understanding the role of the Staff of Government Division in relation to the Court of Summary Jurisdiction is to be found in the cases of *Renshaw v Culverhouse*; *Crossman v Culverhouse*, Staff of Government Division, 13 February 2001, (Deemster Cain, Deemster Kerruish), 1999-01 MLR N.13, *Jones v R* 1999-01 MLR 369 and *Perry v Clague* 1961-71 MLR 162. The import of these cases is, in effect, that appeals on questions of fact alone to the Staff of Government Division arise only in exceptional circumstances.
7. That is not the position in England and Wales where appeals lie of right against findings of fact by Magistrates. This was of course not the position in the instant case and we heard no submissions on the topic.
8. The power of the Staff of Government Division, when dealing with appeals against conviction, does not extend to the Staff of Government conducting a retrial. The orders

that this court can make are made pursuant to section 106 of the 1989 Act, the relevant parts of which are set out below:

"Hearing and decision on appeal

...

(2) *On an appeal from a court of summary jurisdiction the High Court may —*

- (a) confirm, reverse or vary any part of the decision of the court of summary jurisdiction, including a determination not to impose a separate penalty in respect of an offence, or*
- (b) remit the matter with their opinion to the same or another court of summary jurisdiction, or*
- (c) make such other order in the matter as they think just, and by such order exercise any power which the court of summary jurisdiction might have exercised;*

and any order made by the High Court shall have the like effect and may be varied, suspended, revoked or reviewed and enforced in the like manner as if it had been made by the court of summary jurisdiction.

(3) *On an appeal against a conviction or sentence, the powers of the High Court under subsection (2) include power to award any punishment, whether more or less severe than that awarded by the court of summary jurisdiction, which that court might have awarded ...".*

9. Thus, this is in sharp contradistinction to the powers of the Crown Court on an appeal from the Magistrates' Court. Any such appeal against conviction amounts to a retrial and the Crown Court is, in effect, dealing with the matter anew. No Manx defendant has the ability to appeal against convictions based on findings of fact alone, save in exceptional circumstances.
10. We should also point out two further matters which add complexity to this issue. The first is that an opportunity lies to appeal by way of case stated or by judicial review a decision of the Crown Court bench in the English and Wales system. If a Manx version of section 108 (see paragraph 4 above) were adopted in the Island then amendments would have to be made to address the issue of appeal from that constitution of the Court of General Gaol Delivery to the Staff of Government Division.
11. For the sake of completeness this proposed procedure would not affect any appeal by way of case stated or an application for doleance pursuant to section 109 (1) and (6) of the Summary Jurisdiction Act.
12. It would seem sensible to us that Tynwald might consider this issue. It appears to us that there may be good reasons to adopt the England and Wales procedure. The Manx route does not always lead to the most expeditious route to justice. For example, our decision in this case means that the matter will have to go back to the Summary Court, then a trial date will have to be fixed, there may be further hearings, and there will undoubtedly be further delay. Had the matter proceeded directly in the English and

Welsh way, then the matter could have been determined much more expeditiously. There are other sound reasons, borne of the matters we raise in paragraphs 6 – 9 which we believe are worthy of consideration. We commend this judgment to the Department of Home Affairs for their consideration.

CHRONOLOGY

13. The offence is said to have occurred on 21 June 2024. On 24 June 2024 PC Duke was given a USB stick by a member of the public containing footage of the driving said to be dangerous. The member of the public who gave the stick to PC Duke indicated they wished to remain anonymous. To date the identity, i.e. name and address of this person, has not been disclosed to the defence despite requests for their disclosure.
14. On Sunday 3 November 2024 the Appellant attended the police station, voluntarily, to be interviewed. He was at that stage represented by Mr Glover. He answered questions in interview and denied the offence (he was also asked questions about defective motor vehicle parts, but which form no relevance to this appeal).
15. The matter came before the Justices on 23 January 2025. The case was adjourned for two weeks until 6 February 2025. On that date the Appellant applied for legal aid which was refused and pleaded not guilty to the offence.
16. As we understand it, following a refusal to grant the Appellant's application for legal aid, the Appellant became unrepresented and continued to be unrepresented to trial. The refusal by the court to grant legal aid forms a ground of appeal. We heard no argument on that ground and it formed no part of the reason for our referring this matter back to the court, as the position was that by the time we heard the case the Appellant was represented by virtue of a legal aid certificate.
17. On 29 May 2025 the Appellant served a Defence Case Statement. The statement amounts to a denial of the offence, and importantly he made a specific request for the person who wished to remain anonymous to be called by the prosecution. He submitted that the person, the anonymous witness, had driven aggressively and had forced the Appellant to take evasive action. He made the point that unless he was able to question the anonymous witness, the video evidence should therefore be inadmissible.
18. The trial took place on 30 June 2025. The Respondent was represented by Mr Swain. The trial began with an application for an adjournment sought by the Appellant. The Appellant was complaining that the prosecution had not complied with their duty of disclosure. The principal submission made by the Appellant was that he wanted disclosure of the identity of the "*anonymous*" witness. This application was refused and the matter proceeded to trial.
19. The prosecution called PC Duke who produced a copy of the footage and who, when asked about the anonymity of the witness who handed the footage to him, told the court that "*He just didn't want to be involved in any sort of court proceedings*". He was then asked if he had reviewed the footage, and after a very long runup to the crease, told the court "*in my opinion that is a dangerous overtake*".
20. The second witness to be called was PC Joyce, also of the Roads Policing Unit. He gave evidence of the interview and was also asked what his view of the footage was. He also gave his opinion that the driving was dangerous.

21. Mr White gave evidence. He denied that his driving was dangerous and he laid the blame on the person who he believed was the donor of the footage.

GROUNDS OF APPEAL

22. The notice of appeal was lodged by the Appellant on 24 July 2025. The Judge of Appeal granted a legal aid certificate and Mr Clegg was instructed. We mean no disrespect to the original notice of appeal drafted by the Appellant, but we relied upon, and do rely upon, the skeleton argument dated 14 November 2025. Mr Kane, on behalf of the Respondent, responded on 3 December 2025.

23. Mr Clegg relied upon the following five grounds:

- "(a) The Learned Clerk to the Magistrates erred in not granting the Legal Aid Application made on behalf of the Appellant by the Duty Advocate Miss Watterson on the 6th February 2025.*
- (b) The video evidence purporting to show the dangerous driving ought not to have been admitted.*
- (c) Further, the Magistrates ought to have heard the Defendant's Application to exclude the same.*
- (d) The admittance of what amounted to expert evidence from both Police Officers, which tainted their evidence.*
- (e) The interventions by the Chair to the Magistrates were of a nature and frequency that would have affected the confidence of the Appellant, both in the conducting of his own defence, and in his giving evidence. Further, that they were capable of suggesting that the bench had prejudged issues, and therefore had not approached the case with open minds".*

24. For the purposes of this judgment we need only deal with Grounds (b), (c) and (d).

THE APPELLANT'S SUBMISSIONS

- Grounds (b) and (c)

25. We take them in that order for sensible reasons. They are inextricably linked and we will deal with them together.

26. The Appellant complains that in his interview, his Defence Case Statement and on the morning of the trial, he raised the subject of the inadmissibility of the video footage. Mr Clegg submits that he quite clearly raised this issue as a point of law. He pointed out to us in his written submissions that on the morning of the trial the Appellant put it this way:

"In my Defence Statement I've asked for the video evidence to be inadmissible on the basis that the person who presented that to the police I'm told wanted to

remain anonymous. I don't know whether they are anonymous to you, but they're not wanting to come to court".

27. Mr Clegg points out that the situation is best summarised by what he describes as the "ultimate outcome":

"MR WHITE: ... is the video admissible ...

MAGISTRATE: Yes. Our legal advice to us is that yes it is admissible, so unless you know better than, we have two very qualified legal people here in this court who have both said that it is".

28. Mr Clegg also pointed out to us that the transcript does not record any advice being given in open court to the Justices by the Clerk, which in his view would suggest either that it had not been given, in which he submits that the Chair must have spoken in error, or that it was given in private to the Justices, which would be, in his submission, a breach of the Appellant's right to a fair trial.
29. Mr Clegg makes a further point that the Appellant was thereby denied the opportunity to cross-examine the donor of the footage and therefore the trial could simply not be fair. The submission then made by him was that this was a wholesale failing in the proper procedure which led to inadmissible material being admitted.

- Ground (d)

30. It is contended here that the two police officers called from the Road Policing Team were not "experts". Mr Clegg submitted to us that it was clear from the transcript that Mr Swain sought to demonstrate both officers' expertise. We have seen the transcript. It is plain that Mr Swain sought to adduce opinion evidence from both officers. Mr Clegg submitted that that conduct should not have occurred and, what is more, that it was the duty of the Clerk to intervene to prevent it, especially in light of the fact that the Appellant was not legally represented.

THE RESPONDENT'S SUBMISSIONS

31. We were greatly assisted by the sensible approach taken by Mr Kane on behalf of the Respondent.

- Grounds (b) and (c)

32. Mr Kane made the point that there was no reason on the face of the video evidence as to why it should have been excluded. However, he accepted that the Appellant had raised the admissibility point from the very first. He accepted too that the application should have been dealt with in a "judicial manner".
33. Mr Kane accepted that there appears to be no record of the legal advice which was given, and he accepted it was the "natural conclusion" that it was given in the absence of the Appellant. He further accepted that such conduct offends, on the face of it, the principle that legal advice should be given in open court so as to allow parties to make representations.
34. However, Mr Kane rightly identified that perhaps the most pertinent issue for the Appellant was the fact that no details were provided by the police of the anonymous

informant, who was an eyewitness, despite the fact that the Appellant had indicated from an early stage that he wanted the witness to give evidence at court.

35. Mr Kane pointed out to us that it is not uncommon for witnesses to wish to remain anonymous, however he also pointed out (and it is commonsense) that if such is the case, there is a need for the prosecution to make a public interest immunity application if they wish to apply for the evidence of identity not to be adduced. No application was made in this case and that may be, as was pointed out to us and as we have already set out earlier, that the witness simply did not want to be involved in any court proceedings, not that the witness was, for example, in fear.
36. Mr Kane pointed out that the matter could have been dealt with by the Appellant, if necessary, applying for a summons to secure the attendance of the witness by virtue of section 59 of the Summary Jurisdiction Act 1989 on the basis that the witness was likely to be able to give material evidence. That issue could have been dealt with at the same time as the Appellant's application for disclosure of the video footage. This of course would be dependent on the prosecution releasing the name and address of the witness.

- Ground (d)

37. It is accepted by the Respondent that the two witnesses were not called as expert witnesses. It is also accepted, and it could not be otherwise, that the question of whether driving is dangerous is not a matter on which any expert is entitled to give an opinion, as that matter is for the tribunal of fact, be they a jury or, in this case, Justices. Mr Kane pointed out to us that as in respect of Grounds (b) and (c) there was no intervention from the Clerk to halt the evidence, nor was there any objection to the content of the interview, which contains similar conclusions as to the gravity of the driving.

DISCUSSION

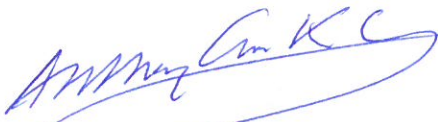
38. We are only required to consider those three grounds.
39. We are satisfied, for very straightforward reasons, that this appeal must succeed. It was just plain wrong that the Justices did not hear the Appellant's submissions on the question of admissibility. This was not something that he raised on the hoof, it had been made clear in his interview and in his Defence Case Statement. It was a real issue, which had to be resolved by argument followed by a reasoned decision. This was not done. What is more, as the Appellant was unrepresented, this matter should have been brought to the attention of the Justices by the Clerk to the court. This did not occur.
40. If submissions had been made, we very much doubt that the material would have been allowed to have been admitted in the absence of the sort of evidence which we have set out above, which indicated either that the creator of the video footage could not give evidence before the Justices for reasons of fear, or for any other good reason which would properly support the admission of potentially material evidence. Mr Kane pointed out there might have been a strong argument against exclusion, but no argument took place.
41. We also agree with both advocates that the transcript gives rise to the overwhelming inference that legal advice had been given in private. We of course bear in mind that

evidence. This was not done in this case and the procedure adopted was wrong and unfair.

42. So far as opinion evidence is concerned, it was again plainly wrong for the evidence to be led in the way that it was by the prosecution and also for the Clerk not to have intervened, which ended up with opinion evidence being given in this way, which was demonstrably wrong. We recognise that when the Chairman of the Bench gave the court's judgment, he noted that PC Joyce gave clear evidence that he (PC Joyce) considered the driving to be dangerous, but the Chairman did go on to say that it was for the court to determine whether the driving was dangerous or not.
43. We are bound to say that the matters which we had to debate are not matters of complex law. There is no need to cite authority for these simple propositions.

CONCLUSION

44. These then are the reasons for which we directed that the appeal should be allowed. This was a serious matter and it is right that it is remitted to another bench of Summary Jurisdiction as soon as reasonably possible. In our judgment this matter will be better dealt with by either the High Bailiff or his deputy.
45. In the interim the disqualification is removed and we order legal aid taxation of the Appellant's costs.



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Judge of Appeal Cross KC



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Acting Deemster Hopmeier