



SHERIFF APPEAL COURT

**[2026] SAC (Crim) 2
SAC/2025/344/AP**

Sheriff Principal A Y Anwar KC
Appeal Sheriff I M Fleming
Appeal Sheriff D A C Young KC

OPINION OF THE COURT

delivered by APPEAL SHERIFF DAVID YOUNG KC

in

APPEAL BY STATED CASE AGAINST CONVICTION

by

[REDACTED]

Appellant

against

PROCURATOR FISCAL, DUNDEE

Respondent

**Appellant: Freeman (sol adv); Richard Freeman & Co., Glasgow
Respondent: Harvey, AD; the Crown Agent**

8 January 2026

Introduction

[1] This is an appeal by stated case against the appellant's conviction of dangerous driving under section 2 of the Road Traffic Act 1988. The main issue raised was whether the sheriff was plainly wrong in finding it established that the appellant's driving had compelled a police car to take immediate evasive action to avoid a head-on collision.

[2] A secondary issue was whether the appellant's driving gave rise to an "accident" for the purposes of section 2 of the Road Traffic Offenders Act 1988, meaning that it was not necessary to warn him that he was subject to prosecution.

Conviction

[3] On 13 August 2025 at Dundee Sheriff Court the appellant was convicted after trial of the following charge:

"(002) on 10th November 2024 on a road or other public place, namely Perth Road, and elsewhere also in Dundee you [REDACTED] did drive a mechanically propelled vehicle, namely motor car registered number ST22 XGR dangerously and did, whilst under the influence of alcohol, drive at excessive speed whilst straddling both lanes of the carriageway compelling a marked police car coming towards you to take immediate evasive action to avoid a head-on collision with your car, and whilst being pursued by said police vehicle with its lights and sirens activated, when instructed to stop by police you did pull in to the side of the road and then pull out again and continue to drive;
CONTRARY to the Road Traffic Act 1988, Section 2 as amended."

[4] At the start of the trial, he had also faced a drink driving charge under section 5(1)(a) of the Road Traffic Act 1988, alleged to have been committed on the same occasion.

However, this charge was repelled following a no case to answer submission during the trial. In addition, the words "and then did repeatedly fail to stop when instructed and did drive into Rosewood Terrace" were deleted from the final part of the narrative of charge (002) before conviction.

[5] The evidence at trial included eyewitness evidence from police officers who were the driver and passenger of the marked police car referred to in the charge. In addition, the Crown and defence relied upon street view CCTV video images which included images of the start of the incident when the police witnesses first encountered the appellant's car.

Findings-in-fact

[6] The salient findings-in-fact made by the sheriff included the following:

(1) At around 0025 hours on 10 November 2024, Police Sergeant Greig Ferguson and Police Sergeant Ryan Gallagher were on uniformed mobile patrol duties in Dundee in a marked police vehicle.

(2) At around 0025 hours on 10 November 2024 Police Sergeant Greig Ferguson was driving the marked police vehicle eastwards on Perth Road, near to the University of Dundee Tower building, Dundee, heading towards the city centre. The speed limit at that section of the road is 20 miles per hour.

(3) At around 0025 hours on 10 November 2025 the appellant was driving a white Toyota Yaris vehicle registration number ST22 XGR westwards on Perth Road, near to the University of Dundee Tower building, Dundee, heading away from the city centre.

(4) At around 0025 hours on 10 November 2025 the appellant was under the influence of alcohol.

(5) At around 0025 hours on 10 November 2025 the appellant was driving above the speed limit of 20mph. There were pedestrians within the vicinity of the appellant's vehicle and the police vehicle.

(6) At around 0025 hours on 10 November 2025 Sergeant Ferguson and Sergeant Gallagher saw the appellant's vehicle ST22 XGR was straddling the white centre line markings of the carriageway as the car approached the police officers' vehicle at excessive speed travelling in the opposite direction.

(7) At around 0025 hours on 10 November 2025 Sergeant Greig Ferguson remarked to his colleague about the speed of the appellant's approaching car.

(8) At around 0025 hours on 10 November 2025 Sergeant Greig Ferguson had to take immediate evasive action to avoid a head-on collision with the appellant's car because of the appellant's car straddling the centre white line markings on the carriageway, accordingly there was an accident. Sergeant Ferguson slowed the speed of the police car almost to a stop and moved the police car to the left of the carriageway.

(9) That due to the speed and position of the appellant's car as it passed the police officers car the officers decide to pursue the appellant's car. The police officers performed a U-turn in the road and gave chase to the appellant's car.

(10) During the pursuit the police vehicle had its blue lights on the roof and in the grill illuminated to get the appellant's car to stop. Sergeant Ferguson was also flashing the headlights of the police car to signal the appellant to pull over. The appellant's car did not pull over. The police vehicle had signage on it saying "Police" and had blue and yellow decals upon it.

(11) The police car took some time to catch up with the appellant's car due to the appellant's car reaching a speed of approximately 50mph according to Sergeant Gallagher.

(12) At a point beyond the junction of Perth Road and Blackness Road heading westwards in the direction of Harris Academy, Dundee, the appellant eventually pulled in. The appellant thereafter pulled out and drove off despite the police car pulling in behind him and the driver Sergeant Ferguson alighting from the police car and approaching the appellant's car.

(13) When the appellant stopped his car at Rosewood Terrace, Dundee, he was the driver and sole occupant of the car.

(14) When the appellant stopped his car at Rosewood Terrace, Dundee, and alighted from the car he was noted by the police officers to be unsteady on his feet, smelt of alcohol, appeared sleepy and was slurring his speech in speaking with both Police Officers Ferguson and Gallagher.

(15) That the appellant agreed to take a roadside breath test as Sergeant Ferguson had reasonable grounds to suspect he had been driving whilst under the influence of alcohol. The appellant carried out the roadside breath test at 0039 hours as directed by Sergeant Ferguson in the presence of Sergeant Gallagher, the appellant failed said test. Sergeant Ferguson cautioned the appellant re his failure of the roadside breath test.

(16) The appellant was removed from Rosewood Terrace to Dundee Police Station by other officers where the appellant was subjected to drink driving procedures.

(17) Crown label number 1 was public space CCTV from the area of Perth Road, Dundee from about 0025 hours on 10 November 2024.

The trial

[7] The evidence of the eyewitnesses about the need for evasive action was as follows. Sergeant Ferguson, the police driver, stated that at approximately 0025 hours he was driving the police car eastwards towards Dundee City centre on Perth Road, near to the University of Dundee Tower building. He immediately noticed a vehicle in the opposing carriageway; he described it as travelling at "a bit of speed." He thought the speed limit was: "20 or 30mph at that point of the road". He also remarked that: "the car was straddling both

carriageways, it was heading towards my vehicle.” The witness explained that because of the position of the car he: “slowed down, almost to a stop, and turned the steering wheel away from the centre.” The officer explained that if he had not taken evasive action then: “in a second there would have been a collision.”

[8] During the witness’s evidence, the CCTV footage from Perth Road was played. The witness confirmed by reference to the road markings shown on screen at 00:25:55 that the speed limit at the point when he first spotted the appellant’s car was 20mph, not 30 mph. The witness confirmed that the position of the appellant’s car at 00:25:55 was: “in his own carriageway but straddling just over the centre white lines there.” The witness was clear that, by reference to the footage at 00:25:59, the appellant’s car was straddling both lanes and if he had not acted his perception was there would have been a collision.

[9] Sergeant Gallagher, the police passenger, said that he and his colleague were on mobile patrol in the vicinity of the University of Dundee dealing with the nighttime economy, involving pubs, clubs and take away restaurants. His colleague was driving the marked police car near to the university on Perth Road, Dundee towards the city centre when he saw: “a vehicle travelling towards us at excessive speed.” He thought that the speed limit on that section of the road was 30mph. The witness recalled that his colleague made a remark about the speed of the vehicle which had caught him by surprise. He said that his colleague had to adjust his road position, moving over to the left, because the appellant’s car was: “straddling the centre of the road.” His colleague decided to pursue the vehicle and accordingly performed a U-turn and drove after the car. He was shown the CCTV footage from Perth Road and confirmed that at 00:25:55 the appellant’s car is towards the middle of the road, over the white line. The witness confirmed that, contrary to his

memory, the speed limit at the locus was 20mph, not 30 mph. He stated that the first thing that drew his attention to the appellant's car was its speed.

[10] The content of the CCTV images is described in detail later in this opinion.

[11] The sheriff explained his assessment of the evidence in the following terms:

"Both sergeants gave clear evidence – which I accepted as both credible and reliable – that Sergeant Ferguson had to take evasive action to avoid a head-on collision with the appellant's car, by slowing and adjusting his position on the roadway. There was CCTV evidence in this case from what is routinely referred to as 'public space' CCTV, it formed Crown label number 1. In terms of the well settled law of *Gubinas and another v HMA* [2017] HCJAC 59 I was entitled to have regard to that footage in considering my verdict. Trite, to observe that where - as here – the witnesses spoke to their interpretation of what the footage showed I was not bound to follow their interpretation, but I was entitled to accept their evidence on the matter if I saw fit. The fact that it has been decided that the *actus reus* of a case can – in appropriate cases – be proved by CCTV footage alone: *Shuttleton v PF Glasgow* [2019] HCJAC 98 does not mean that CCTV footage in a trial takes on greater significance than other direct evidence for example direct eye-witness testimony, in all cases. As the fact finder, I was entitled to conclude – as I did – that the vantage point of the police officers was completely different to that of the CCTV which was from afar and above the roadway. Those different vantages points provide a perfectly plausible explanation as to why the evidence of the CCTV and the police officers might be different as to the degree over the centre of the roadway that the appellant's car was and the likelihood of a collision but for evasive action. In this case I was presented with two police sergeants compelling evidence; one with thirteen years' service the other with eighteen years' service who gave their evidence in a compelling manner. I could find no trace that the officers were giving exaggerated or false evidence and my interpretation of the CCTV was that in the generality it supported, confirmed the evidence of the officers. The evidence of Sergeant Ferguson as the driver of the police vehicle was the best direct evidence of whether there would or would not have been a collision but for his evasive actions because he was in the driving seat of the police vehicle and closest to the appellant's car not the CCTV camera. The CCTV showed several civilians walking on the pavement – who were carrying takeaway food – in the environs of the point where the appellant's car and the police officers' car passed which supported the evidence of a nighttime economy referred to by Sergeant Gallagher in his evidence. Demonstrating that despite the hour members of the public were in and around the locus."

Submissions for the appellant

[12] The appellant submitted that the sheriff had been plainly wrong to make finding-in-fact (8), and in particular the finding that there would have been a head-on collision if the police car had not swerved. He accepted that there was eyewitness evidence that the police driver had to take evasive action to avoid a head-on collision with the appellant's car; however, viewing of the CCTV images demonstrated that this was not correct.

[13] Once the provenance of CCTV images has been established, the images are real evidence that are available to the decision-maker. The evidence of CCTV images can prove facts despite contradictory eyewitness evidence (*Gubinas, supra* [59]). The CCTV evidence is the best evidence. There is no need to assess credibility and reliability of CCTV images. Provided that CCTV evidence is clear, and fully represents what took place, it should be relied on in preference to eyewitness evidence that is contradictory. The police witness had given evidence about his perception of what had taken place. The CCTV evidence clearly demonstrated that his perception was not correct. The sheriff had given reasons for discounting what was seen on the CCTV images and preferring the contradictory police witness evidence. However, in this case, the CCTV images were clear; the images should at least have created a reasonable doubt in the sheriff's mind. If the finding relating to evasive action to avoid a head-on collision was removed, the remainder of the findings did not support a conviction for dangerous driving.

[14] The appellant further submitted that what had occurred did not comprise an accident for the purposes of section 2(1) of the Road Traffic Offenders Act 1988; however, this was not ultimately relevant for the purposes of this decision.

Submissions for the Crown

[15] The advocate depute submitted that this court could not apply its own view of what was shown in the CCTV images unless it first determined that the sheriff was plainly wrong in his own assessment. The sheriff's assessment in this case was not plainly wrong.

[16] The Crown accepted that CCTV images can be preferred to contradictory witness testimony if the images clearly show something different from what the witnesses say. Conversely, eye-witness testimony may be preferred where CCTV images are unclear.

[17] In the present case, the sheriff had both seen the CCTV images and heard the witness testimony. Having done so, he was entitled to place greater weight on the witness testimony. He had explained his reasons for accepting the evidence of the witnesses despite the contrary impression that might be gained from the CCTV images. The CCTV camera had a different viewpoint from the eyewitnesses, was further away, and showed a different angle. The sheriff had given cogent reasons for accepting the witness testimony. His decision should not be disturbed.

[18] Finally, the advocate depute submitted that, even if the findings about taking evasive action to avoid a head-on collision were removed, there was sufficient evidence to comprise dangerous driving.

Decision

[19] The appellant invites this court to interfere with the findings of the sheriff on matters of credibility and reliability. We accept that these are matters in which an appellate court is slow to interfere.

[20] In *Clarke v Edinburgh and District Tramways Co Ltd* 1919 SC (HL) 35, Lord Shaw of Dunfermline stated that an appellate court should intervene only if it is satisfied that the judge was plainly wrong (pp 36 – 37). As Lord Thankerton explained in *Thomas v Thomas* 1947 SC (HL) 45 at p 54:

"(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

In addition, Lord Hope of Craighead stated in *Thomson v Kvaerner Govan Ltd* [2003]

UKHL 45; 2004 SC (HL) 1 [17]:

"It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."

[21] The appellant argues that this is a case where the judge is plainly wrong. This is based on the evidence contained in the CCTV images, which are available to this court as they were to the trial sheriff. However, the trial sheriff both saw and heard the eyewitness testimony, including testimony about what is shown in the CCTV. This court only has the sheriff's report of this evidence.

[22] The challenge to the trial sheriff's findings focuses on the critical allegation that the appellant drove at excessive speed whilst straddling both lanes of the carriageway

"compelling a marked police car coming towards you to take immediate evasive action to avoid a head-on collision".

[23] There were three sources of evidence about this. First, a clear statement from Sergeant Ferguson that the appellant's car was heading towards the police car and that if he had not taken evasive action, a collision would have resulted. He stated that the appellant's car was straddling both carriageways. He confirmed that the CCTV evidence showed at 00:25:59 the position of the appellant's car was: "in his own carriageway but straddling just over the centre white lines there." He stated that, if he had not acted, his perception was there would have been a collision.

[24] The second source of evidence was Sergeant Gallagher, the police passenger. He provided evidence that the police driver adjusted the position of the police vehicle because the oncoming car was straddling the centre of the road. This evidence is consistent with the driver's allegation that evasive action had to be taken to avoid a collision. However, the passenger did not state in terms that there would have been a collision, head-on or otherwise, if the driver had not adjusted the police car's course.

[25] The third source of evidence comes from the CCTV images. We have had an opportunity to view these images. These show the following. The camera is clearly situated above the road and angled slightly downward to show a view along the road. It captures both carriageways, the pavements that border the road, and the walls and gardens at the edges of the pavement. The roadway runs straight away from the camera and then curves to the right. The images show the police car heading away from the camera, and the appellant's vehicle in the opposing lane heading towards the camera. The bonnets of the two vehicles draw level at 00.26.00. This is therefore the point at which any head-on collision would have occurred.

[26] At the point where the vehicles draw level, the police car is squarely in its own lane. It is passing a car parked beside the pavement in the same lane. The lane is wide enough for the police car to pass the parked car comfortably without reaching the centre line separating the two lanes. There is a clear gap between the side of the parked car and the side of the police car. The appellant's car is driving in the opposing lane. It is largely within its own lane, but the side of the appellant's car is on or slightly over the central dividing line. There is a clear gap between the side of the police car and the side of the appellant's car. This gap appears only slightly narrower than the gap between the police car and the parked car.

[27] The core issue is whether it is possible that a head-on collision was avoided by evasive action of the police driver? To reach the point where the car bonnets drew level, the police car had driven in its own lane, on a linear course that ran approximately midway between the parked vehicle and the central separating lines. The police car did not alter course to veer away from the appellant's car before the bonnets of the two moving cars drew level. Accordingly, there was no evasive action by the police car up to this point. This is clear from a viewing of the CCTV images.

[28] As the two moving vehicles passed each other, the police car veered slightly to the left, remaining within its own lane. The brake lights came on and it slowed rapidly, before commencing a turn in the road.

[29] The CCTV images are clear. They show the point at which the two cars drew level from an angle that allows the viewer to see the relative positions of each car. It is plain from viewing the CCTV images that the driver of the police car did not take evasive action before the bonnets of the cars had passed each other. It is plain that the evasive action taken by the police driver car did not prevent a collision between the two cars, far less a head-on

collision. This matter is apparent from the CCTV images. Any action which might be described as evasive took place after the cars had passed each other.

[30] The police car did veer to the left away from the lane occupied by the appellant's car as the two moving vehicles passed each other. At that point, it immediately braked. At the point where the appellant's car first appears in the CCTV images, the angle and distance make it more difficult for a viewer of the images to assess the vehicle's speed and position. The appellant's vehicle may have been further over the dividing line, and travelling at speed, at the point when it first came into the police driver's view. The CCTV evidence therefore does not contradict the police driver's evidence that he suddenly altered direction and speed in response to seeing the speed and position of the appellant's car. To that extent, the sheriff was entitled to accept the police driver's evidence.

[31] The events that the police driver described took place without warning, and at speed. The sheriff was equally entitled to find that the officer's evidence about the evasive action he took was credible, being given in good faith from the best of his recollection.

[32] However, the police driver's evidence was not consistent with what was shown in the CCTV images. It will often be advantageous for witnesses, who were present and who saw what happened, to comment on what the images depict. This will be so, especially if the witness testifies to something not obviously apparent from the images, or denies something apparently shown in the images. None of this detracts from the fundamental position that, once the provenance of the images is established, they become real evidence *in causa* which the sheriff can use to establish fact, irrespective of concurring or conflicting testimony. As an example, even if all the witnesses say that the deceased was stabbed in the conservatory, if CCTV images show that he was shot in the library, then so be it (*Gubinas, supra*, [59]).

[33] This is not one of the cases referred to by the Crown, where unclear images can be supplemented by oral evidence. The CCTV evidence is clear that a head-on collision was not averted. To that extent, this is one of the very rare occasions where an appeal court can be convinced by the plainest of considerations that it is justified in finding that the trial judge has formed a wrong opinion. In view of the CCTV images, the sheriff was plainly wrong to find reliable the police driver's evidence that, but for the evasive action he took, there would have been a head-on collision.

[34] The first question in the stated case is whether, on the evidence led, the sheriff was entitled to make finding-in-fact (8). We answer this in the negative.

[35] The answer to the two remaining questions in the stated case flow from the above. Taking these in reverse order, the third question is whether, on the findings in fact made, the sheriff was entitled to conclude that an accident occurred such that the provisions of section 2 of the Road Traffic Offenders Act 1988, as amended, removed the need for formal intimation of prosecution in terms of section 1 of said Act.

[36] Section 1 states that a person shall not be convicted of a relevant offence unless he was warned at the time the offence was committed that he might be prosecuted. However, section 2 provides that no warning is necessary if, at the time of the offence or immediately after it, an accident occurs owing to the presence on a road of the vehicle in respect of which the offence was committed. The sheriff proceeded on the basis that the warning was inadequate, but that an accident had taken place.

[37] The finding that there was an accident is contained in finding-in-fact (8). More significantly, the finding that there was an accident is expressly based on the finding about taking immediate evasive action to avoid a head-on collision.

[38] Given that finding-in-fact (8) is no longer supported, there is no finding that there was an accident. Moreover, the evidence that comprised the accident is no longer supported. In any event, there were no other findings that would have been capable of supporting the conclusion that an accident had occurred. It follows that third question must also be answered in the negative.

[39] The second question is as follows:

"On the findings in fact made, was I entitled to convict the appellant of dangerous driving contrary to section 2 of the Road Traffic Act 1988, as amended?"

[40] In view of the above conclusion that the Crown has not proved that an accident took place, the conviction for dangerous driving cannot stand. The sheriff proceeded on the basis that the warning given by the police officer was inadequate and uncorroborated. There is no finding-in-fact relating to a prosecution warning being given to the accused, which was an issue at trial. The conviction was not based on the giving of a statutory warning, but on the alternative basis of an accident having occurred. That being so, the conviction cannot stand in the absence of the finding that there had been an accident. Nor can an alternative conviction for careless driving be imposed. Therefore, the second question must also be answered in the negative.

[41] Accordingly, the appeal is allowed and the conviction quashed.