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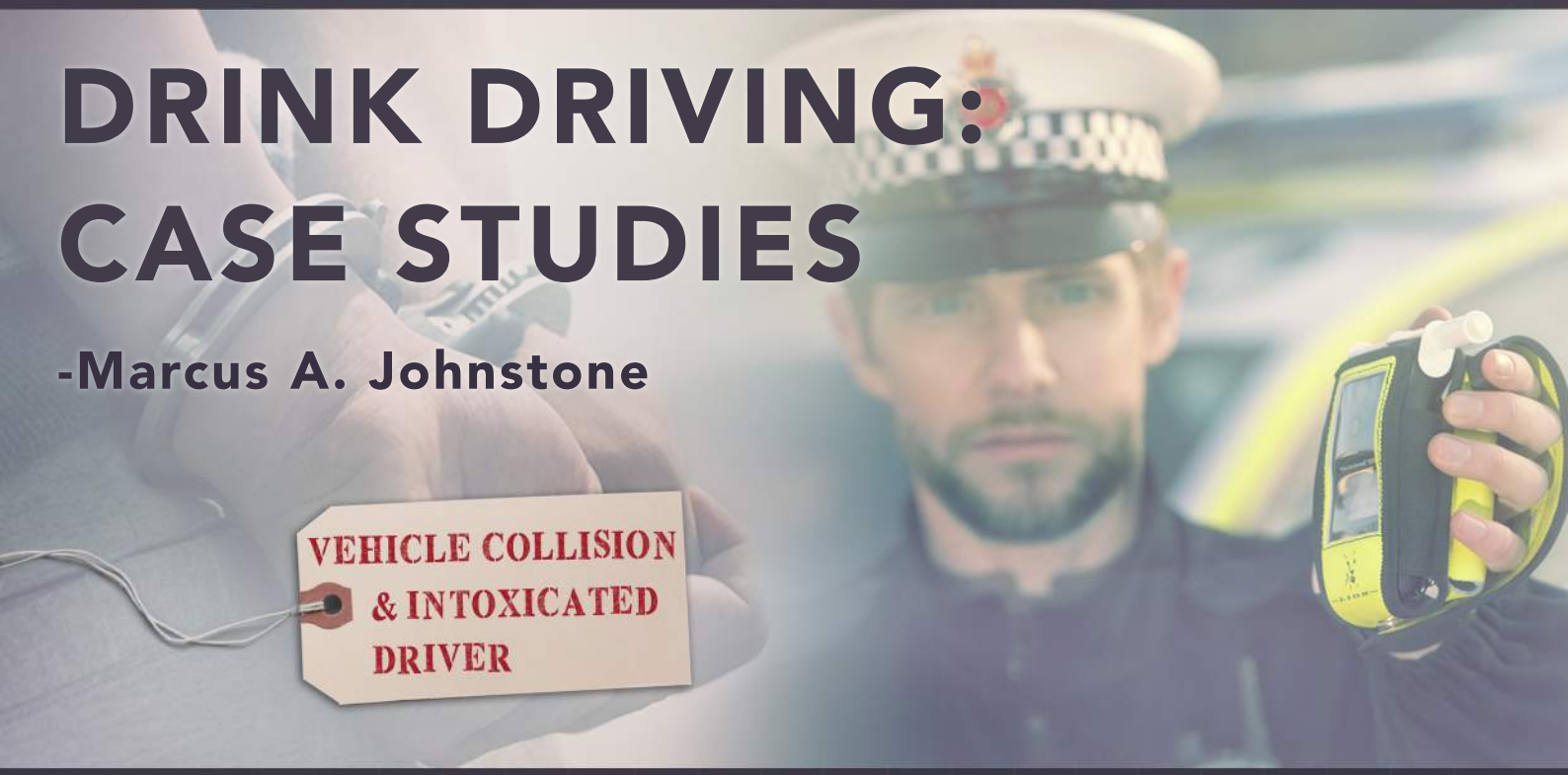
DRINK DRIVING SOLICITOR, 134 WIDNES ROAD
WIDNES, CHESHIRE, WA8 6AX

OFFICE: 0151 422 8020
MOBILE: 07810 804 464

DRINK DRIVING: CASE STUDIES

-Marcus A. Johnstone



CASE PROFILE

SOLICITOR ON THE CASE:

MARCUS A JOHNSTONE

SPECIALIST FIELD:

MOTORING DEFENCE LAW

OFFENCES:

DRINK DRIVING
FAILING TO STOP
FAILING TO REPORT

POTENTIAL SENTENCE:

2 YEAR DISQUALIFICATION

If you have any concerns with your own case, please contact me and I will be pleased to discuss all the options open to you. My initial telephone conference is always free of charge. My office number is 0151 422 8020. My direct email is marcus@drinkdrivingsolicitor.co.uk.

Case Two - A positive breath test, forensic evidence and a positive ID. Any chance of success?

My client was charged with three offences: driving with excess alcohol, failing to stop after an accident and failing to report an accident. My client's car crashed into another vehicle. An eye witness apparently saw my client get out from the driver's seat and run off. The witness called the police. My client was then arrested by the police about 15 minutes later in the location. He was breath tested and was over the limit.

My client had some cuts and bruising to his face, consistent with an air bag explosion. The police spoke to the eye witness who gave a description of my client. The police seized the car in order to test the airbag for DNA. The logic, of course, is that if the DNA matched my client then it would prove he was the driver at the time of the crash.

The police had a strong case. They had a positive breath test. They had an eye witness. They had forensic evidence. The police and CPS believed it was an open and shut case.

I represented this client from start to finish. You can't imagine the surprise expressed by the CPS at the first court hearing when my client pleaded not guilty to all charges. The CPS solicitor looked at me like I was as mad as my client!

However, one thing I have learnt over the years is that it is vital to properly test the evidence. Just because the police or the CPS believe they have the evidence, it does not mean they have. Unless you accept the evidence and plead guilty, the CPS must prove the case based on accurate and reliable evidence to a standard beyond reasonable doubt.

When the police and CPS believe they have the right person, especially in circumstances such as in this case, I often find that the police and CPS fail to do what they should do. My defence comprised three main elements:

a. Accuracy of the breath test.
b. Identification of the driver.
c. Reliability of the forensic evidence.

Let me briefly take you through each element of my defence.

Accuracy of the breath test.

Most solicitors fail to properly challenge breath test evidence (probably because most solicitors are not experts on drink-drive law). There is a belief that if a positive breath sample has been obtained then there is nothing to challenge. This is not the way I work. I always challenge every aspect of the breath test procedure - and you'll be surprised just how often I find mistakes with the evidence.

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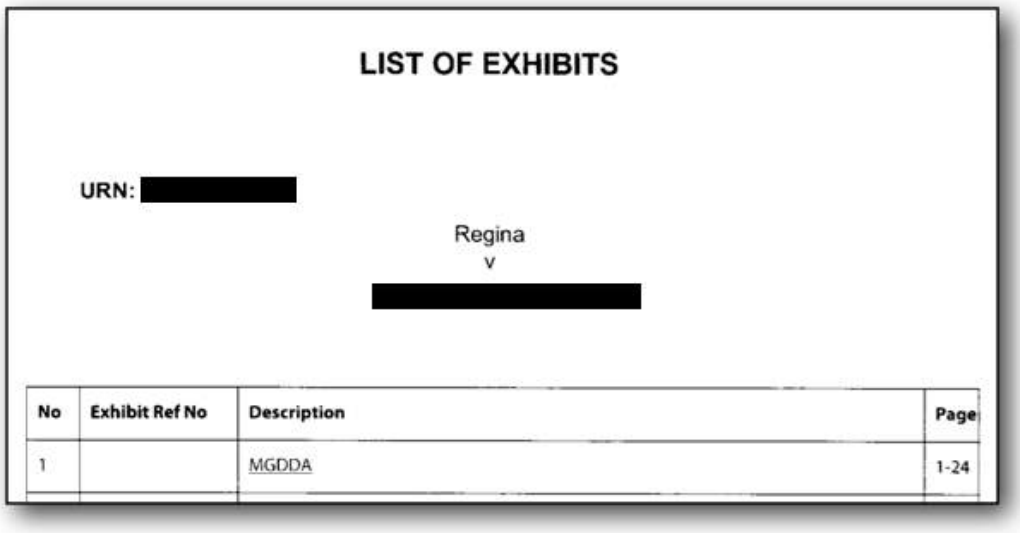
Most people believe (including most solicitors) that if an intoxilyser printout has been obtained (from the breath test device) showing a reading over the limit then there is nothing to challenge. The printout must be right. Right?

Wrong. The printout, by itself cannot be used on its own in evidence.

In every case, whilst completing a breath test, the police should complete a very detailed pro-forma known as the MGDDA document. This stands for Manual Guidance Drink Driving form A. It is about 25 pages long (A4 size) and details every aspect of the breath test procedure including all necessary questions, answers, warnings and requirements. There is a separate document, the MGDDB, for use when a blood or urine specimen is taken. The MGDDC document details any hospital procedure. The MGDDD document details any technical defence, such as a post driving consumption defence, where back calculations of alcohol should be made (and often fail to be completed correctly) by the police.

The printout showing the result of the breath test should be attached to one of the pages within the MGDDA document. The printout will usually be signed by the completing officer and you, the motorist. The MGDDA document will be signed by the officer and any witness. Like the situation with an intoxilyser printout, the police and CPS believe that the MGDDA document can be used in evidence, as an exhibit. In every case I have dealt with the MGDDA (which includes the printout) is referred to within the Advance Disclosure (documents handed over at the first court hearing) as an exhibit. See the first entry on the "List of Exhibits" in my client's case:



LIST OF EXHIBITS

URN: [redacted]

Regina
v
[redacted]

No	Exhibit Ref No	Description	Page
1		MGDDA	1-24

In actual fact, the MGDDA document and the breath test printout are not exhibits and cannot be presented in evidence as exhibits.

Take a look at the guidance for CPS lawyers, taken from the CPS's own website:

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Admissibility of the National Drink Pro Forma - Form MG.DD

In the event of a not guilty plea to a summary drink/drive offence you should try to obtain a formal admission under Section 10 of the Criminal Justice Act 1967 as to the contents of the Form. Such an admission must include the name of the defendant, the date and place of the offence and the results of the breath test or of the laboratory test. If such an admission cannot be secured then the officers conducting or witnessing the sampling procedure will normally have to be called to give evidence in person.

The Form MG DD contains assertions of fact, it is a document made out of court and is inadmissible under the hearsay rule. Section 9 of the Criminal Justice Act 1967 only permits that the evidence contained in a witness statement is admissible were the maker of it in the witness box. If the officer who filled out the Form were in the witness box he could not produce the Form in chief as an exhibit, though he could refer to it as a memory refreshing document. The production in evidence of that Form attached to a short Section 9 CJA statement will **not** render the content admissible.

The only way in which the information contained on a Form MG DD can be produced in documentary form as admissible evidence is if that information is extracted from the form and incorporated into a Section 9 CJA statement made by the officer.

The first paragraph reminds the CPS lawyer to try and get an admission from you. If you admit to something the CPS does not have to prove it! In my view, never admit to anything as far as the MGDDA form goes. You'd be amazed at the mistakes that can be made by the police.

Read the second paragraph. Then read it again. It's important. Most CPS lawyers don't seem to realise that the MGDDA document (or the MGDDB/C/D) is inadmissible hearsay. That's correct - inadmissible hearsay. In other words, it cannot be used in evidence.

But if you agree the MGDDA in an admission, then it can. General rule - don't agree!

As far as the exhibit issue is concerned, note also the second paragraph. It states: *"If the officer who filled out the Form were in the witness box he could not produce the Form in chief as an exhibit"*. In other words, the MGDDA document is not an exhibit - whether or not the person completing it is in court!

Even if the officer writes a witness statement referring to the MGDDA document as an exhibit, it still cannot be used as an exhibit!

The only way the content of the MGDDA document can be used in written evidence is if the content is incorporated into a witness statement. In other words, the witness statement from the officer should contain all the information on the MGDDA document.

If you have been charged with drink driving, check your MGDDA form and witness statement. I bet that the statement from the officer (even if you have one!) does not contain the information from the MGDDA document.

A quick word of warning. Use a solicitor that knows what they are doing. You do not want to rush off to the CPS and point out its mistakes or ask for a properly completed witness statement prior to the trial date. Remember, they have to prove the case against you. If they have not got the evidence, they have not got a conviction.

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I recently represented a different client on a drink-driving charge. I explained to the CPS solicitor at trial that she could not use the MGDDA or printout in evidence. She did not believe me and thought I was joking. She had intended to simply hand over the documents to the Magistrates to read. She insisted they were exhibits and could therefore be exhibited into evidence. After showing her the legal guidance on the CPS website the penny finally dropped. "Oh" she said, "I can't believe I've be using these forms as exhibits for 5 years and no one has ever told me I can't". Amazing, but true.

If you have been charged with drink driving and do not remember a MGDDA form being completed with you, the police may have breached the procedure. There are some 20-30 questions that you should have been asked before the police go on to warn you that you do not have to give a breath specimen at all. The police should inform you of what happens if you fail to give such a specimen (known as the statutory warning). Quite simply, if the police failed to warn you of what happens if you fail to provide a specimen then you should not be convicted, even if you went on to provide a specimen.

Note the actual section from the MGDDA document in my client's case:

A10	**BREATH SPECIMEN REQUIREMENT**
	"I require you to provide two specimens of breath for analysis by means of a device of a type approved. The specimen with the lower proportion of alcohol in your breath may be used as evidence and the other will be disregarded. I warn you that failure to provide either of these specimens will render you liable to prosecution."
	"Do you agree to provide two specimens of breath for analysis ?"

Section 7(7) of the Road Traffic Act 1988 states:

> A constable must, on requiring any person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

If my client had accepted that this warning was provided to him, he would, in effect, be helping the police to convict him (because the police would not then have to prove this aspect of the offence). However, my client stated that this warning was not provided and so I raised this as an issue in the case. Once this point was raised as an issue it would then be for the CPS to prove it was given. This is an important strategic step. The CPS would need all relevant police officers to attend court at a trial in order to give evidence and be cross-examined. If the police fail to attend court (you'd be surprised how often police fail to attend court) then the CPS would not be able to prove the statutory warning was given.

From a strategic point of view, I would also usually request access to the CCTV taken from the breath test room. If the police fail to keep the CCTV (and often they do) then it may be possible to have the case thrown out of court for what is known as an abuse of process. Even if the CCTV is provided it may show that the breath test procedure was not completed correctly.

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Identification of the driver.

Not only did the CPS have to prove that my client was over the limit, it had to prove that my client was driving the car whilst over the limit. This is why the police always prefer it if they stop a vehicle whilst the driver is still in the driver's seat - it is easier to prove who was driving and that any alcohol in the body must have been consumed before driving.

Of course, in this case my client was arrested some 15 minutes after he was alleged to have been driving. The police did not see my client drive the car, but they did have a witness who apparently saw my client exit the car and run away. Whether or not my client was drunk at the time he was stopped did not, by itself, create an offence. It was necessary for the police to prove he was also the driver.

The police took a detailed statement from the witness who described the driver. Most people would be able to guess what the police should have done next; hold an identification parade. This is much simpler to arrange since most ID parades are completed by video. What should happen is the defendant is photographed looking forward and to each side. He then chooses several other video images of people who look similar. All images are put in a computer 'line up' and the witness then views the photographs to see if the defendant can be identified.

The police are well aware of the need for any identification evidence to be collected properly. Consider the following case of R v Forbes 2000:

> **Where an eyewitness identified or might be able to identify a person arrested on suspicion of involvement in an offence, Code D: 2.3 of the Police and Criminal Evidence Act 1984 (s 66) Codes of Practice imposed a mandatory duty on police officers that, except in the limited circumstances specified in that paragraph, an identification parade was to be held whenever the suspect disputed the identification and consented to the parade. Prior identification by the relevant witness which was considered unequivocal or actual and complete did not displace that obligation.**

Code D, of the police Codes of Practice, which all police should know backwards, states:

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Circumstances in which an identification procedure must be held

3.12 Whenever:

(i) a witness has identified a suspect or purported to have identified them prior to any identification procedure set out in paragraphs 3.5 to 3.10 having been held; or

(ii) there is a witness available, who expresses an ability to identify the suspect, or where there is a reasonable chance of the witness being able to do so, and they have not been given an opportunity to identify the suspect in any of the procedures set out in paragraphs 3.5 to 3.10,

and the suspect disputes being the person the witness claims to have seen, an identification procedure shall be held unless it is not practicable or it would serve no useful purpose in proving or disproving whether the suspect was involved in committing the offence. For example, when it is not disputed that the suspect is already well known to the witness who claims to have seen them commit the crime.

You do not have to be a chief inspector of police to understand that an ID parade was not only required, it would also have greatly assisted the police and the prosecution if the witness identified my client.

So, have a guess what the police failed to do. Yes, that's correct. No ID parade.

Without eye witness evidence, the only way the police could prove my client was the driver was by DNA forensic evidence (see below).

Reliability of the forensic evidence.

In a case such as this, I would expect the police to seize and forensically examine the clothing from the alleged driver as well as the air bag. A mobile telephone may also contain important data. Let's consider this in more detail.

If my client had been the driver then his clothes would contain powder from the air bag explosion. It would be simple to test his jeans, shirt or jacket for such powder. The police did seize his clothes so I expected the police to check for air bag residue.

The air bag would also be expected to contain DNA from my client such as saliva, blood or skin, assuming he was the diver. The air bag would have been likely to have made contact with his face, usually causing bruises, scratches or even cuts to the skin. The police did take photographs of my client - which did show bruises and a cut.

The police also seized my client's mobile phone. It would be expected that anyone who had just been involved in a car crash and then ran away would be likely to call someone for help or even try to arrange an alibi. By analysing telephone records the police would be able to see if any call had been made around the time of the crash and, importantly, who received the call. The police would then be able to interview that recipient of the call.

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It should also be remembered that forensic evidence can also be used by the defence. For example, if I sent my client's clothes to be forensically analysed and found no air bag residue, I would then have good evidence that he was not the driver (unless he changed his clothes prior to arrest).

It is also very important to obtain and properly check any forensic report from the police or CPS. These reports will contain scientific and medical language and are difficult to understand to the untrained eye. You may be surprised at the mistakes that can be uncovered (providing, of course, that your solicitor knows what they are doing).

I was therefore a surprised to see points 9-11 on the Schedule of Unused Material:

9	Volume Crime Header SC140045647 Jumper	Case Papers	CND
10	Volume Crime Header SC140045648 Jacket	Case Papers	CND
11	Volume Crime Header SC140045646 Mobile Phone	Case Papers	CND

The Schedule of Unused Material is an important document. It should be provided to you within 28 days of a plea of not guilty being entered at court. However, in almost every case I handle the CPS fails to disclose this document in time. This by itself can cause problems for the CPS as a failure to provide evidence within time may result in the case being thrown out, or to place pressure upon the CPS to drop the case.

In my client's case, the Schedule of Unused Material was served very late. The police listed the jumper, jacket and phone. This indicated that the police did not want to use these items as part of the prosecution case. Why?

From my point of view, it would indicate one of the following:
a. The items were never even tested / analysed.
b. The items were tested / analysed but failed to show anything of benefit to the CPS.

You will also note the code "CND". This means "Clearly Non Disclosable". In other words, the CPS did not want to disclose these items to the defence. Why seize my client's own property and then refuse to return it to him or even allow the defence to see it?

A swab test had been taken from my client following arrest so it would be possible for test for DNA from my client on the airbag. As part out my investigatory work, I discovered that the police had sent away the airbag for forensic testing. This meant that the result of the test must be made available - either as used evidence (and therefore disclosable to me) or unused (and should therefore be listed on the Schedule of Unused Material).

The Schedule of Unused Material did not mention the forensic report so I knew the CPS would want to use the report as part of its case. However, as we got closer to the trial date I realised the CPS had a major problem. If the CPS fails to disclose evidence in time, it is often stopped from using that evidence at the trial.

Due to Government funding shortages, redundancies within the CPS, low morale, staff shortages and poor administration, the CPS often only gets round to sending disclosure to

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the defence a coupe of days before a trial. Yes, you have read that correctly - a couple of days before a trial. Although the CPS usually has several weeks or months to make disclosure of evidence (as it must do in accordance withy the Criminal Procedure Rules and other legislation), it routinely fails to comply with the law!

Late disclosure does not worry me. I often use this to win cases.

This case had gone on for several months. The CPS had failed to provide disclosure of evidence within the required timeframe. You will not from the above that the Schedule of Unused Material was also served late. As far as the expert report is concerned, have a guess when the CPS chose to disclose it to the defence.

It was only disclosed on the day of the trial!

In fact, prior to arriving at court I had not even been informed that an expert report had been obtained.

The CPS solicitor at court looked very smug when I was handed the report. I was informed by the CPS that, in the CPS's opinion, it confirmed beyond any shadow of doubt that my client was the driver of the car and, therefore, he should now change his plea to guilty to all charges.

Contrary to the CPS solicitor's view, my own belief was that we had now dramatically increased our chances of winning the case! Serving a report so late meant that I could apply to exclude the report entirely. The expert had not attended court personally so there was next to no chance of the report being read in court unless I agreed. Note, even if the expert had attended court I would still have been able to exclude the evidence and stop the expert giving evidence, because of late disclosure.

Of course, prior to making any decisions I did take time to read the report and discuss it with my client.

What I found in the report was difficult to believe. Below is a summary of its content.

The CPS instructed its own expert scientist to forensically examine the air bag from the car steering wheel. The CPS's aim was to find saliva or blood from my client on the airbag. This would be strong evidence that my client was the driver of the car at the time of the accident.

When I received a copy of the expert report / witness statement I was informed by the CPS that, in the CPS's opinion, it confirmed beyond any shadow of doubt that my client was the driver of the car and, therefore, he should now change his plea to guilty. However, when I carefully considered the report, I actually wondered if the CPS had read it themselves. Let me point out some of the sections that, in my view, did not particularly help the CPS.

The opening paragraph stated:

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This is an abbreviated witness statement and comprises a limited summary of specific findings relating to examinations carried out following standard laboratory procedures. It does not necessarily cover all items received and/or examinations that have been conducted. This abbreviated witness statement format has been produced in compliance with the Home Office Forensic Product Specifications and does not comply with Part 33.3 of the Criminal Procedure Rules.

If this was an abbreviated statement, where was the full statement? It had not been disclosed to the defence. Any expert report that *"comprises a limited summary of specific findings"* is cause for concern, particularly when we were then informed that the report *"does not necessarily cover all items received and / or examinations that have been conducted"*.

Anyone reading this would, I'm sure, be asking the same questions. Has the expert chosen to report only those findings favourable to the CPS? Why produce only a "limited summary"? What is the difference between a "summary" and a "limited summary"? Why not examine all items received? Why not report on all items examined?

The expert refers to the Criminal Procedure Rules but fails to state which version. This can be important because Part 33.3 is different in the 2012 and 2014 version. The report was written in 2015 so I assume it refers to the latest 2014 version.

Part 33.3 of the Criminal Procedure Rules 2014 states when, and on whom, the report must be served.

Part 33.3 of the Criminal Procedure Rules 2012 details what must be contained within the report.

In any event, why does the expert report *"not comply"* with the Criminal Procedure Rules? Why bother to write a report for use in a criminal prosecution, but then fail to comply with the very rules that must be followed if a report is to be used?

Considering this was just the first paragraph of a report consisting of several pages, you can imagine my delight at settling down to read the remainder!

The result of any forensic examination was of paramount importance. The expert examined both blood and saliva.

[redacted] - *Driver's airbag from* [redacted]
The outside front of the airbag was examined for the presence of possible blood stains. Three small light brown stains were identified, which gave a positive reaction in a test for blood. One of these stains has been submitted for DNA profiling as sample [redacted]2/A.

The outside front of the airbag was subjected to a chemical test for the presence of saliva. A single positive reaction was obtained. This positively reacting area was cut away and submitted for DNA profiling as sample [redacted]2/B.

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The conclusion from the expert was bad news for my client. It stated:

> This DNA profile matches the DNA profile of [redacted]

The conclusion of the report was that the DNA found on the airbag was from my client.

However, when I considered the main body of the report in detail I became more concerned as to the accuracy and reliability of the expert's conclusion. Consider the following wording taken from the report:

> A low level mixed DNA result has been obtained indicating the presence of DNA from at least three individuals. A partial major DNA profile can be determined.

"A low level mixed DNA" does not sound too convincing, particularly when the report confirmed the DNA came from *"at least three individuals"*. Even if my client's DNA was on the airbag, the prosecution evidence is weakened if the airbag also contained DNA from two other people.

The report then stated:

> the majority of the DNA could have originated from him.

But why use the word "could". Surely if the DNA was from my client then it would be more appropriate to use more definitive wording. And even if the "majority" of the DNA came from my client, why does this prove he was the driver. Could the person who provided the minority of the DNA not be the driver?

> The minor components from the result obtained are, in my opinion, unsuitable for meaningful comparison due to their low level nature.

If the minor components of the sample were *"unsuitable for meaningful comparison"*, and only a *"partial major DNA profile can be determined"*, how was it possible to conclude that the DNA was that of my client?

The report went on the state:

> A possible low level trace of DNA from another individual was also detected

Surely, this comment would cause a concern as to the reliability of the DNA specimen and whether it came from my client.

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Interestingly, tucked away further in the report was some small print. I've increased the size so that you can see it! It stated:

> Presumptive testing has been carried out in this case. It should be noted that presumptive testing for a given body fluid does not provide confirmation of the presence of that body fluid. In order to address the likelihood that a given stain is a particular body fluid and whether any DNA detected could be attributed to that body fluid, other factors will be taken into account. A complete evaluation can be provided in a full witness statement if required.

"Presumptive testing"! Really? It's a bit like saying we presume you are guilty and we are not going to investigate anything that may prove you innocent! The small print also confirmed that this particular report was not even a complete evaluation. A separate report and full witness statement would be required if a complete evaluation was to be provided.

This particular report did not worry me. Even if the report was used in evidence, I felt the court would not agree with the conclusion of the expert. However, I would never take this risk. Much safer to get our own expert to provide our own report and to expand upon the mistakes in the prosecution's report.

However, due to the late disclosure of the report I did not even have to worry about this. My intention was to simply use the late disclosure, and inaccuracies in the report, to exclude it.

When I read the expert report I seemed to recall an entry on the Schedule of Unused Material. When I cross-referenced it with the Schedule of Unused Material I was pleasantly surprised. See the entry below:

6	CSI: Vehicle examined and no blood or fingerprints found.

Hang on a minute! No blood found? No fingerprints? Surely if my client had been the driver then his fingerprints would be in the car. If no blood was found in the car, how did the expert conclude that blood was found on the airbag?

After my conference with my client I had a further meeting with the CPS solicitor. She thought that I was about to inform her that we would be changing our plea to guilty. She was surprised when I informed her that she should now drop all charges and, if she did not, I would seek to exclude all her forensic evidence (I briefly explained why). She would then end up with little evidence to prove the identity of the driver - no forensics, no identification parade, no driver!

Two minutes later and all charged were dropped. The CPS solicitor even printed off a letter confirming the case was dropped (see below). We were awarded costs from Central Funds. The letter I later received from the CPS (see below) didn't quite acknowledge the mistakes made by the police and the CPS but informed us that the case had been dropped because there was not enough evidence!

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Dear Sirs

NOTICE OF DISCONTINUANCE

DEFENDANT: [redacted] (D.O.B. [redacted])

OPERATIONAL REFERENCE NO./PTI URN: [redacted]

COURT AND HEARING DATE: [redacted] Magistrates Court [redacted]

I am writing to inform you that I have today sent a notice to the Justices' Chief Executive, under section 23 of the Prosecution of Offences Act 1985, discontinuing the following charges against you/your client:

Drive motor vehicle when alcohol level above limit [redacted]
Driver of a vehicle fail to stop after a road accident [redacted]
Driver of a vehicle involved in a road accident fail to report that accident [redacted]

The reason given by the CPS for dropping the case was:

there is not enough evidence to provide a realistic prospect of conviction

Needless to say, my client was extremely happy.

The CPS did not like losing this case. Unfortunately the CPS sometimes (most times!) conducts its cases with blinkers on - CPS lawyers believe they have the right person and try to bully people into pleading guilty. The CPS hate it when they have to prove a case based on evidence! This is why I always make them prove every aspect of the case.

As I often say to clients: what have you got to lose?

I have dealt with hundreds, if not thousands, of motoring cases over the years. Once a case is dropped by the CPS, it's over. Finished. However, in this case I received a little surprise. The CPS did not want to go down without an extra fight. Read part 2 below!

Part 2

More silly games, and more mistakes, by the CPS

As noted above, once the CPS decides to drop a case it's over. In this case the CPS solicitor even informed the court that the case had been dropped. She provided me with a letter of discontinuance. I was even awarded costs from Central Funds.

Approximately 4 weeks later my client received a Summons for the same three offences. In effect, the CPS was prosecuting him again for the same offences - even though it had already dropped the charges!

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This clearly indicated to me that the CPS did not know what it was doing. I decided to take the unusual step of taking the CPS to court for abusing the process of law. My legal argument was served on the CPS. Note the opening section below:

IN THE [redacted] MAGISTRATES COURT

REGINA

v

[redacted]

DEFENDANT'S APPLICATION TO STAY
PROCEEDINGS AS AN ABUSE OF PROCESS

Introduction

1. This is a defence application to stay these proceedings as an abuse of process.

2. This application is made on the basis that the Crown has deliberately misused and manipulated the process of the court.

It comes to something, doesn't it, when, in my view, the very body responsible for prosecuting cases in the UK deliberately misuses and manipulates the process of the court to try and achieve a conviction. In effect, to try convict an innocent man of a crime he has not committed - and even after dropping a prosecution against him.

The CPS could not use the expert report at the trial because it was served too late. For this reason it dropped the case before the trial started. In my view, the CPS was trying to get round this problem by hoping to re-start the prosecution it at a later date and then using the expert report (by serving it in time).

In my view this was a clear abuse of process. The CPS needed stopping.

Along with my legal argument I served four documents (amounting to some 200 pages). Note the third document listed; the Code of Crown Prosecutors. It never ceases to amaze me how many CPS lawyers have not even read their own Code for prosecuting cases. Had the CPS bothered to read this document it would have been aware of the problems it was causing itself.

DRINK DRIVING SOLICITOR, 134 WIDNES ROAD
WIDNES, CHESHIRE, WA8 6AX
OFFICE: 0151 422 8020
MOBILE: 07810 804 464

Documentation

3. The following documents are relied upon and are attached to this skeleton argument:

   a. *Derby Crown Court, ex parte Brooks (1985) 80 Cr.App.R. 164*
   b. Magistrates' Court Disclosure Review, May 2014
   c. The Code for Crown Prosecutors, January 2013
   d. S.9 witness statement of [redacted] dated [redacted]

Further on in the legal argument I emphasised the manipulation and misuse by the CPS:

Manipulation and misuse of process by the Crown

27. The prosecution of the defendant has been resumed by the crown in the absence of further evidence being served on the defence or any other reason being put forward by the crown for the reinstitution of proceedings.

28. It is submitted that the conduct of the crown has brought justice into disrepute by seeking to subvert the exercise of the court's powers of adjournment, case management, and ability to control its own process to secure fair treatment for those accused of crime.

I even explained the very narrow circumstances where the CPS may re-start a prosecution:

39. The Code for Crown Prosecutors gives examples of particular circumstances in which proceedings may be reinstituted:

   a. An incorrect decision by the crown being remedied to maintain confidence in the justice system.
   b. Cases where more evidence is likely *to become available* in the near future.
   c. Cases stopped for a lack of evidence but where more significant evidence is discovered *later.*
   d. Cases involving a death in which a review following an inquest concludes that a prosecution should be brought.

Clearly, the fact that in my client's case the CPS did not have any new evidence, and was not likely to find any, meant that it had no grounds to re-start a prosecution. The CPS did not even serve any evidence with the Summons.

In all, 46 points detailed the law on abuse of process, legal arguments, mistakes made by the CPS, etc. In point 47 I concluded:

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WIDNES, CHESHIRE, WA8 6AX
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MOBILE: 07810 804 464

Conclusion

47. It is submitted that there are compelling grounds to stay the proceedings for abuse of process.

My legal argument and all relevant documents were served on the CPS. A copy was served on the court. I also asked that the new prosecution be adjourned pending the outcome of the abuse of process hearing. The matter was scheduled for a hearing before the District Judge.

Just a couple of days before the hearing the CPS dropped the case for a second time. Its letter stated:

Dear Sirs

NOTICE OF DISCONTINUANCE

DEFENDANT: [redacted] **(D.O.B.** [redacted]

OPERATIONAL REFERENCE NO./PTI URN: [redacted]

COURT AND HEARING DATE: [redacted] **Magistrates Court** [redacted]

I am writing to inform you that I have today sent a notice to the Justices' Chief Executive, under section 23 of the Prosecution of Offences Act 1985, discontinuing the following charges against you/your client

Drive a motor vehicle with alcohol above the limit
Fail to stop
Fail to report

The effect of this notice is that you/your client no longer need to attend court in respect of these charges and that any bail conditions imposed in relation to them cease to apply.

The decision to discontinue these charges has been taken because

a prosecution is not needed in the public interest.

This time the case was dropped because a prosecution was not in the public interest!

Cheeky buggers, eh?

My client was, again, delighted with the outcome.

I hope the above case has illustrated the importance of challenging a drink driving offence, even if you think you are guilty. Any drink-driving related offence is dealt with seriously by the courts. Punishments depend on your alcohol level but range from a minimum 12 month driving ban and

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fine, through to a community service order or even imprisonment of up to 6 months. It is vital that you do as much as possible to avoid a conviction.

I will be pleased to discuss your case with you over the telephone completely free of charge.

My office number is **0151 422 8020.**
My mobile number is **07810 804464.**
My email is marcus@drinkdrivingsolicitor.co.uk**.**