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Judgment: approved by the Court for handing down | *Delivered:* **02.04.2004**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

CASE STATED BY A RESIDENT MAGISTRATE

BETWEEN:

CHIEF INSPECTOR WALLACE

Complainant/Respondent

and

MARTIN STOKES

Defendant/Appellant

Before Kerr LCJ, Nicholson LJ and Campbell LJ

KERR LCJ

Introduction

[1] This is an appeal by way of case stated from a decision of a Resident Magistrate sitting at Strabane Magistrates' Court on 28 June 2002 whereby he convicted the appellant, Martin Stokes, of an offence contrary to article 174 (2) of the Road Traffic (Northern Ireland) Order 1981 of fraudulently using a certificate of insurance.

Factual background

[2] On 27 September 2001 the appellant was driving a Ford Fiesta motor car on Ligford Road, Strabane, County Tyrone when a collision with a tractor

occurred. As a result of the collision the appellant was charged with a number of offences including careless driving, using a motor vehicle without there being in force a valid policy of insurance and fraudulently using a certificate of insurance.

[3] When police attended the scene of the accident the appellant had produced a document purporting to be a certificate of insurance issued to one 'P. Stokes' and naming 'M. Stokes' as the only other authorised driver. This appeared to be valid and was accepted as such at the time. Subsequently, however, it transpired that the certificate had been issued on 22 March 2001 to a Mr Pat Stokes who was living in Preston but on 1 May 2001 the insurance company wrote to him informing him that the policy would be cancelled within seven days and asking that the certificate of insurance be returned. The certificate was not returned and the policy was duly cancelled on 8 May 2001. At the time of the accident therefore the vehicle that the appellant was driving was not insured. Moreover, at the time the certificate was issued, the only person (other than Pat Stokes) who had been authorised to drive the vehicle was Matt (not Martin) Stokes. The appellant was not the named driver.

[4] On 24 October 2001 Reserve Constable Ivan Wilson interviewed the appellant about the certificate of insurance. The appellant's solicitor was present. When asked about the offence of fraudulently using the certificate, the appellant replied, "I did not know the policy was cancelled. The policy has now been returned to Mr P Stokes in England."

The hearing before the magistrate

[5] The case made for the appellant before the magistrate in relation to the charge of fraudulently using a certificate of insurance was that he had an honest but mistaken belief that he was the 'M. Stokes' referred to in the certificate and that he did not know that the certificate had been cancelled.

[6] At the close of the prosecution case, Mr Roche, who was then acting for the appellant applied for a direction of 'no case'. According to the resident magistrate he "responded to that submission with the assertion that where a prima facie case had been made out the burden of proof thereby passed to the defendant to establish on the balance of probabilities that he had not used the certificate of insurance fraudulently."

[7] The appellant was called to give evidence and on the issue of the certificate of insurance testified that Pat Stokes was his cousin and that he had left the Ford Fiesta with him some two weeks before the accident when he was in Northern Ireland. He claimed that his cousin had given him the certificate of insurance and said that he (*i.e.* the appellant) was the 'M. Stokes' named on it. The appellant said that he had not lived in England for a number of years and

was unable to explain why his cousin should have included his name on a policy of insurance for a car that was used for the most part in England. He also said that he had returned the certificate of insurance to his cousin at the latter's behest shortly after the accident. He was unable to explain why his cousin should have wanted it then, since the policy had been cancelled in May.

[8] In the case stated, the magistrate has averred that at the close of the case he had stated bluntly that he did not believe a word that the appellant had said in evidence. He had no "reasonable or lurking doubt" as to his guilt. The appellant's solicitor, Mr Roche, had a somewhat different account. He claimed that at the end of submissions the resident magistrate retired to his chambers "to research the law". He returned some forty five minutes later declaring himself satisfied that his researches had confirmed his view that the burden of proof on the fraudulent use of certificate charge moved to the defendant, citing the case of *A-G (Comer) v Shorten* [1961] IR 304. The magistrate did not make express reply to this claim but in the case stated he said that he expressed his conclusion "in terms of a burden of proof upon [the] defendant to satisfy [him] that he had honestly believed that the certificate covered him to drive the car."

The appeal

[9] It is accepted that the magistrate was in error in suggesting that the burden of proving that he had not used the certificate fraudulently shifted to the appellant after a prima facie case had been found to exist. Indeed the magistrate himself in the case stated did not seek to defend his statement at the close of the prosecution case on the incidence of the burden of proof. For the respondent Mr Valentine has argued, however, that since the magistrate was satisfied that the appellant's evidence was unworthy of belief, the finding of guilt should not be disturbed. To support this argument he relied on the decision in *R v McManus* [1993] 11 NIJB 36. In that case the Court of Appeal held that the trial judge should not have drawn certain inferences against the appellant but that, nevertheless, since the evidence against him was "extremely strong" the trial judge would have convicted him even if he had left out of account the matters that he ought to have ignored. The appeal against conviction was therefore dismissed.

[10] For the appellant Mr McCann submitted that the magistrate ought to have acceded to the application for a direction of no case to answer. He suggested that there was no evidence that the appellant had the requisite guilty knowledge in relation to the certificate of insurance and since there was nothing to contradict his claim that he had proffered the certificate believing it to be valid, a direction of no case should have been given. Alternatively, Mr McCann argued that the magistrate's misapprehension as to the incidence of

the burden of proof had infected his approach to the finding of guilt and this could not be rescued by an *ex post facto* rationalisation of the evidence.

Conclusions

[11] We consider that there was ample evidence on which a *prima facie* case could be found. The circumstances in which the certificate was produced were strongly suggestive of knowledge on the appellant's part that the certificate was not valid, or, at least, that it did not authorise him to drive the car. His cousin who owned the car lived in England and had attempted to obtain insurance for it there. The insurance had been cancelled some months before the accident date. The person 'M. Stokes' named on the certificate was not in fact the appellant although he produced the certificate representing that he was indeed that person. All these facts were established before the magistrate in the course of the prosecution's case. Taken together they were clearly sufficient to raise a *prima facie* case.

[12] The magistrate's evaluation of the appellant's evidence in the course of the hearing before him, however, was obviously conducted from the wrong standpoint. Instead of assessing that evidence for its potential to create a reasonable doubt as to the defendant's guilt, the magistrate's approach must perforce have been to appraise it as a means of establishing the probability of his innocence. Although the magistrate now says that he had no doubt as to the appellant's guilt, and although we do not doubt the authenticity of his belief that he would have so found if he had correctly apprehended that the legal burden remained throughout on the prosecution, that is a judgment that necessarily has been made in hindsight and not in the course of the hearing.

[13] This situation is markedly different from that which obtained in *McManus.* In that case there was sufficient evidence that existed independently of the material that the judge should have disregarded that would inevitably have led to a finding of guilt. Here the magistrate has adopted an impermissible approach to the estimation of a critical section of the evidence (the defendant's testimony) that inevitably led to error in his decision as to whether the appellant was guilty of the offence charged. While he now considers that he was in fact convinced of the appellant's guilt beyond reasonable doubt, this ineluctably involves a *post hoc* judgment rather than one made in the course of the trial itself. On that account, the appellant's conviction cannot be allowed to stand.

[14] The first question posed in the case stated is: -

> "(a) Did I properly direct myself when I held that, a *prima facie* case against the defendant having been made out, the burden of proof thereby passed to the defendant to establish on the balance

> of probabilities that he had not fraudulently used a certificate of insurance contrary to article 174 (1) [this should be article 174 (2)] of the Road Traffic (Northern Ireland) Order 1981?"

As we have already observed, it is not in dispute that the burden of proof did not pass to the defendant and we answer this question "No".

[15] The second question posed is as follows: -

> "Was there, in law, sufficient evidence before me, properly directing myself as to the burden of proof, upon which to convict the defendant on the charge?"

We consider that this question is inapt. Whether there is sufficient evidence to convict the appellant must depend on an evaluation of the evidence against the proper application of the burden of proof and, for the reasons that we have given, we do not consider that the magistrate carried out this exercise in the course of the trial. We will therefore quash the conviction and remit the matter to the magistrates' court at Strabane with a direction that the trial of the appellant be conducted according to the legal principles as we have explained them in this judgment. The hearing must, of course, take place before a different magistrate.