

DRINK DRIVING: CASE STUDIES

-Marcus A. Johnstone

**TAKING
THE
P**S**

CASE PROFILE

SOLICITOR ON THE CASE:

MARCUS A JOHNSTONE

SPECIALIST FIELD:

MOTORING DEFENCE LAW

OFFENCE:

DRINK DRIVING

POTENTIAL SENTENCE:

13 MONTH DISQUALIFICATION



Initially, when I was first contacted by my client, he was intending to plead guilty. He was resigned to losing his licence and just wanted me to represent him in court to try and keep the length of ban to a minimum.

As usual, the 'Advance Disclosure' was only made available at the first court date.

Fact: The Advance Disclosure is a bundle of papers containing all the initial evidence that the police and Crown Prosecution Service (CPS) want to use against you. Many people go to court on the first court date not realising these papers exist.

If you are thinking of pleading guilty it is vitally important that the Advance Disclosure is properly reviewed prior to making any final decision.

The Advance Disclosure will usually contain the following documents:

1. **The charge sheet and bail sheet (2 pages).**
2. **A case summary (put together by the police for the CPS) (6-8 pages).**
3. **Witness statements from all relevant witnesses (2-10 pages depending on number of witnesses).**
4. **The MGDDA document detailing the breath test procedure (20-25 pages).**
5. **The MGDDB document where blood or urine has been taken (20 pages).**
6. **The printout (giving the breath test result) or lab report (giving the blood or urine result) (1 page).**
7. **PNC record of any previous convictions (3 pages).**

If you were taken to hospital, perhaps following a vehicle accident, the police should have completed a MGDDC document detailing the specimen taken at the hospital.

If post driving consumption is being raised, and therefore a back calculation of alcohol is required, the police should also have completed a MGDDD document.

Of course, additional witness statements should also be provided from those involved in completing the MGDDC or D documents, taking specimens, etc.

It is important to check that all the above documents are contained in the Advance Disclosure. Of course, it's not just a case of checking the documents are there, it's knowing what should be in them and what to do with them.

It is possible to win a case simply by finding an error in the documentation. It therefore makes sense to me that we check these documents prior to any final decision being made to plead guilty. It will usually take 2 - 4 hours to properly review the Advance Disclosure.

It should also be remembered that the Advance Disclosure is just that; advance disclosure. It is not full disclosure. Believe it or not, you are only entitled to full disclosure of the evidence after you have entered a plea of not guilty. In other words, the Advance Disclosure contains only those documents that the police choose to show you before you enter a plea.

Any documentation that the police do not want to use against you (because it does not help the prosecution) will not be part of the Advance Disclosure. You will only be informed of any evidence in your favour after a plea of not guilty has been entered at court. If you plead guilty, you'll never get to see it!

Sentencing Note: In most cases, in my view, there is very little benefit in entering a plea of guilty. The length of any disqualification is not affected by the timing of a guilty plea. By entering a plea of not guilty you have everything to gain, and little to lose.

By knowing what to look for in the MGDDA and MGDDDB documents, it is possible to win cases very easily. But a word of warning: don't believe what these documents say! Any mistakes made by the police may not be obvious from such documents.

Let me give you an example from a recent case of mine.

Case Three - Urine Specimens (Are the police taking the ps?)**

My client was pulled over by the police. He provided a breath specimen that was over the limit. He used his 'statutory option' to replace the breath specimen with urine. Details relating to the breath procedure was contained on the MGDDA document. The urine procedure, including the involvement of the police officer and nurse, was detailed on the MGDDDB document. When I reviewed these documents, and the witness statements, I was suspicious. Various entries indicated to me that several mistakes had been made by the police officer.

This article will concentrate on just one error made by the police. Importantly for my client, such an error meant the CPS had no case. Let me explain this error in more detail because it's a situation that arises in many cases where the police request a urine specimen.

When I arrived at court for the first hearing I obtained from the CPS the Advance Disclosure. The entry on the MGDDDB document stated:

First specimen obtained and discarded by at 2355 hours. Second specimen obtained, retained and divided at 2357 hours.

Concerning the second specimen, the MGDDDB document went on to state:

Two identical samples were bottled and labelled correctly before giving [the defendant] the option of choosing his own sample

On the face of it, it appeared that the police had obtained a valid urine specimen. However, my client had informed me that the 'first' specimen consisted of the police telling my client to go to the toilet. Only the 'second' specimen was provided to the police in a specimen pot. This was then divided, with one part being sent to the lab for analysis.

Legal Argument: In my view, the police had not correctly informed my client how to provide a specimen. The first specimen was not provided. Therefore the 'second' specimen was not, in law, a second specimen and should not have been analysed.

Let me explain.

Section 7(5) RTA 1988 states:

A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.

The police often believe that urinating into the toilet is the same as providing a specimen. But consider the following case of *Ryder v CPS 2011* which states:

"It is, however, plain to me that the word "provides" involves providing it to someone, and that someone, in the context of the Road Traffic Act 1988, is the police officer making a request for such a specimen".

The case goes on to state: ***"A specimen of urine is in my view not provided at the moment it is excreted. Provision involves the concept of provision to someone. As I have already observed, this is plainly to the requesting officer."***

In my opinion, the specimen alleged to have been provided at 2355 hours was not, in fact, provided. My client was taken to the toilet area and was allowed to go, by himself, to the toilet. My client did not urinate into a specimen pot and, therefore, no urine was provided to anyone at this time.

The first and only specimen that was obtained by the police was at 2357 hours. This was obtained in the sample jar. It is this specimen that should have been obtained and discarded (as the first specimen). Instead, it was this specimen that was retained and divided (as the second specimen).

To make matters worse for the police, it was incorrect, and misleading, for the police to state on the MGDDB document that this specimen was ***"obtained and discarded"*** when it was not, in law, obtained or discarded.

The police did not understand the law. The police believed that asking my client to urinate into the toilet was the same as obtaining and discarding the urine. There is an element of logic to this. But often the law is not based on logic!

The correct procedure would have been for the police officer to obtain from my client a first specimen in a specimen pot. The officer should then have emptied away this first specimen. Usually the specimen pot is then washed out and, some time later within one hour, a second specimen is obtained, retained and divided. It is clear from the evidence that this did not happen.

No lawful specimen was obtained from my client. No specimen: no evidence.

Needless to say, my client did not enter a plea of guilty!

Procedural Note: You may have noticed that, according to the police, the 'two' specimens were provided just 2 minutes apart. In my view, this did not comply with the law. I have written a separate article on this issue.

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 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.

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