



SHERIFF APPEAL COURT

**[2026] SAC (Crim) 9
SAC/2026/178/AP**

Sheriff Principal N Ross
Sheriff Principal A Miller
Appeal Sheriff W Sheehan

STATEMENT OF REASONS

delivered by SHERIFF PRINCIPAL ANDREW MILLER

in

Crown Appeal by Stated Case

by

PROCURATOR FISCAL, GLASGOW

Appellant

against

AFAQ AHMAD

Respondent

**Appellant: Fyfe, (sol adv), AD; the Crown Agent
Respondent: Culross, advocate; John Pryde & Company, Edinburgh (for Richard Freeman & Company, Glasgow)**

7 July 2026

[1] On 7 July we heard the procurator fiscal's appeal by stated case against the sheriff's decision to sustain a submission of no case to answer made on behalf of the respondent during his summary trial for a contravention of section 5A(1)(a) of the Road Traffic Act 1988.

The sole question for this court was whether the sheriff had erred in sustaining the submission of no case to answer.

[2] A number of matters were agreed by joint minute, including the fact that the respondent was the driver of the vehicle concerned at the relevant time and the relevant statutory procedures. The only witness led by the Crown was a forensic toxicologist, who spoke to the terms of a certificate produced for the purposes of section 16 of the Road Traffic Offenders Act 1988 ("the Act") and signed by him, setting out the results of the analysis of a sample of the respondent's blood. The toxicologist's evidence was led without objection and was therefore evidence *in causa* (*Skeen v Murphy* 1978 SLT (Notes) 2).

[3] The stated case indicated that the submission of no case to answer was presented on the basis that, even though the toxicologist had given evidence about the matters set forth in the certificate, that evidence could not amount to sufficient evidence of the results of the analysis because the Crown had failed to prove service of the certificate on the respondent in terms of section 16 of the Act. Although the respondent's solicitor had challenged the certificate (for the purposes of section 16(4) of the Act) prior to the trial, he submitted that the challenge had resulted from disclosure of the certificate to the solicitors, not from service upon the respondent, and that it was only open to the Crown to rely on section 16(5)(a) of the Act where the certificate had been served on the respondent.

[4] In these circumstances, the procurator fiscal depute initially conceded that, as the Crown had not produced an execution of service of the certificate on the respondent, there was no case to answer and then, after an adjournment, revised her position and submitted that the sheriff should repel the submission of no case to answer on the basis that "any challenge to the service of a document should be made in advance of the trial."

[5] The sheriff sustained the submission on two grounds: firstly, that the procurator fiscal depute's initial concession that there was no case to answer was binding on the Crown; and secondly that, before the Crown could rely on section 16(5)(a) of the Act, the certificate setting out the results of the analysis required to be served on the respondent in terms of section 16(5)(b), which the procurator fiscal depute could not confirm had happened. In the absence of proof of service, "any analysis relied upon by the crown requires to be corroborated when that is the only evidence on the matter." Corroboration was lacking given that the Crown had led no evidence of the respondent having appeared to be intoxicated, or the like.

[6] We allowed the Crown's appeal. We agreed with the advocate depute that the procurator fiscal depute's concession that there was no case to answer did not amount to an unequivocal renunciation of the Crown's right to prosecute the respondent. Furthermore, that concession was not binding on the Crown and did not foreclose the question of sufficiency (*HMA v Paterson* 2012 SCCR 621; *McLeod v Fraser* 1986 SCCR 271). The question of whether there was a sufficiency of evidence was a matter for the sheriff. The sheriff recognised this by carrying out her own assessment of sufficiency notwithstanding the Crown's concession. For the respondent, Ms Culross did not seek to persuade us to any contrary view.

[7] Turning to the application of section 16 of the Act, whether the certificate was served directly on the respondent or whether it was served indirectly by disclosure to his solicitors was of no consequence, because the respondent's solicitors challenged the certificate by notice for the purposes of section 16(4) of the Act prior to the trial. As a result of that challenge, it was not open to the Crown to rely on section 16(1)(b) of the Act. The certificate

could not therefore have been self-proving, in the absence of a witness to speak to its contents.

[8] However, the Crown called the toxicologist who had signed the certificate to speak to its contents. His evidence was given without objection and we are satisfied that, in terms of section 16(5)(a) of the Act, his evidence was therefore sufficient evidence of the facts stated in the certificate. It was not necessary for the Crown to serve the certificate on the respondent in terms of section 16(5)(b) of the Act in order to be able to rely on section 16(5)(a). Section 16(5)(a) and section 16(5)(b) of the Act deal with different situations: subsection (5)(a) applies where the witness who signed the certificate gives evidence of the contents of the certificate, whether or not the certificate has been served on the accused and, if served, whether or not it is challenged in terms of subsection (4), whereas subsection (5)(b) applies where a certificate is timeously served on the accused, is not challenged and is therefore self-proving in terms of subsection (1)(b), even without a witness to speak to its terms (*Herron v Whitehill* 1969 SLT 238; *MacNeill v Perrie* 1981 SLT (Notes) 29; *McLeod v Fraser*). In fairness to the sheriff, none of these authorities were cited to her by the Crown or by the defence at the respondent's trial.

[9] The evidence of the toxicologist called by the Crown to speak to the terms of the certificate at the respondent's trial was, by virtue of section 16(5)(a) of the Act, sufficient evidence of the facts stated in the certificate, namely the results of the analysis of the respondent's blood sample. That evidence, along with the facts agreed by joint minute, provided a sufficiency of evidence. The procurator fiscal depute's concession that there was no case to answer was wrongly made and the submission of no case to answer should have been repelled.

[10] We therefore answered the single question posed in the stated case in the affirmative and remitted the case to the sheriff to repel the submission of no case to answer and thereafter to proceed as accords.