

Ch 4: Proof facts without evidence

Presumptions without basic facts

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The presumption has been applied in the case of speed enforcement lasers. In *DPP v Marrable* [2020] EWHC 566 (Admin): a TRUCAM device approved by the Secretary of State to measure speed is presumed accurate and reliable; evidence of a technical nature showing that the device was not operating or *operated* correctly is needed to rebut the presumption; the accused's opinion of his own speed is not enough, but could be, possibly, if supported by unopposed evidence of a print-out from an in-car GPS tracking device.

In the case of breath testing machines, to which the presumption has also been applied, see *Ali v DPP* [2020] EWHC 2864 (Admin), [2020] 4 WLR 146. It was held that a breath specimen machine is presumed to be reliable; an accused against whom the presumption operates bears an evidential burden to adduce sufficient relevant evidence to the contrary; if such evidence is adduced, the legal burden is on the prosecution to establish, to the criminal standard, that the machine is reliable.

The presumption of marriage

The presumption of formal validity

The standard of proof

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Old authorities are to the effect that the standard of proof to be met by that party is high, and in *Mahadervan v Mahaderva* [1964] P 233 at 246, it was held that the presumption can only be rebutted by evidence which satisfies beyond reasonable doubt that there was no valid marriage. However, in *Hayatleh v Mofdy* [2017] 3 FCR 92, the Court of Appeal reviewed the authorities and noted a growing trend to require a lower standard of proof, an 'enhanced degree of evidential solidity on the balance of probability with clear or positive or compelling evidence depending on the facts of each case before the presumption may be displaced' (at [35]). This is in line with the modern approach applicable generally in relation to serious

allegations in civil cases (See **Ch 3 The standard of proof, The standard of proof in civil cases, Serious allegations pp 86- 90** and related updates).

The presumption of essential validity

The standard of proof

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In the past, the standard of proof required to rebut the presumption of *essential* validity was lower than the standard suggested by authorities on the presumption of *formal* validity (see the authorities mentioned in the text. If, as would appear, the presumption of essential validity is a persuasive one, it is submitted that, in the light of *Hayatleh v Mofdy* [2017] 3 FCR 92 and other modern authorities, the standard of proof required will be the same as for the presumption of formal validity and other civil cases involving serious allegations.

Formal admissions

Criminal cases

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In *R v Drummond* [2020] EWCA Crim 267 at [58], it was stated that an admission made pursuant to section 10 “...is conclusive of the matter stated and it is not open to the court to reject that fact.’ By contrast, a witness statement which is read to the court by agreement under s 9 of the 1967 Act, ‘...is treated no differently than if the account had been given by the witness from the witness box [and] the tribunal of fact is entitled to accept or reject or the witness’s account as it see fit.’