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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 204



CASE NO 202002478/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 9 February 2021

LORD JUSTICE POPPLEWELL
MR JUSTICE SPENCER
THE RECORDER OF RICHMOND UPON THAMES
HIS HONOUR JUDGE LODDER QC
(Sitting as a Judge of the CACD)

REGINA
V
GEORGE ANDRONACHE

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MISS C ALLISON appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE SPENCER: This is an appeal against sentence brought by leave of the single judge.
2. On 16 September 2020 in the Crown Court at Peterborough, the appellant, who is now 32 years old, was sentenced by Mr Recorder Fields to a term of three years' imprisonment for two offences of causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988. The appellant had pleaded guilty and was afforded credit of 20 per cent for his pleas, as to which no complaint is made. He was disqualified from driving for a period of 54 months and until he passes an extended driving test. The lead sentence of three years was imposed on count 1, where the injuries the victim had sustained were the more serious. There was a concurrent sentence of 12 months' imprisonment on count 2, where the victim's injuries were less serious.
3. The appellant also pleaded guilty to driving otherwise than in accordance with a licence, contrary to section 87 of the 1988 Act, for which the judge imposed no separate penalty. He also imposed no separate penalty on count 3, possessing an offensive weapon. We need say no more about that offence.
4. The sole ground of appeal is that the sentence of three years' imprisonment was manifestly excessive. The single judge refused leave on a further ground of appeal, that the sentence should not only have been shorter but should also have been suspended. That ground is not renewed.
5. The sentence of three years' imprisonment after credit of 20 per cent for plea means that the judge's starting point was three years nine months after trial. The maximum sentence for a single offence of causing serious injury by dangerous driving is five years' custody. The issue in the appeal is whether, for these two offences, a sentence of three years nine months (before credit for plea) was manifestly excessive.
6. The appellant was a man of good character. He is a Romanian national and has lived in this country for a number of years. He is married with a young child. He had no driving convictions. He held only a provisional UK driving licence and was therefore required to be supervised by a qualified driver. On the day in question, when the offences were committed, the person in the car with him was not qualified to supervise him as he had not held a UK licence for three years. That gave rise to the offence of driving otherwise than in accordance with his licence. Nor was the car displaying L-plates.
7. The appellant was working at the DHL packaging factory in Wisbech, Cambridgeshire. So were the two victims of the offences and indeed all the eyewitnesses. The offences took place just after the end of the night shift at around 6.15 am on Tuesday 16 July 2019. The appellant had just completed his shift. He walked out of the factory and crossed New Bridge Lane to where his car was parked, a Hyundai Tuscan. It was parked almost opposite the factory entrance. The appellant and a work colleague, aged 21, who was notionally supervising his driving, stood outside the vehicle for a while smoking. The weather was bright and sunny.
8. We have seen CCTV footage showing the appellant and his colleague getting into the vehicle and the vehicle driving off along the road. A number of pedestrians were around, leaving the factory, and several vehicles. The road is a single carriageway with a 30 mph speed limit. On the appellant's left as he drove off there was a narrow footpath and a high hedge. On the opposite side of the road there was a wider footpath. Vehicles were parked half-on and half-off that footpath and pedestrians were walking

along the footpath.

9. The CCTV footage was from a camera on adjoining premises and does not show the subsequent collisions. There was eyewitness evidence, however, from another Romanian factory worker sitting in a car parked behind the appellant's car when the appellant drove off. That eyewitness describes hearing the appellant's wheels spinning and looking up to see him starting "with big speed". The appellant's vehicle travelled a short distance up the road, probably around 50 metres, and then veered to the opposite side, heading at an angle straight towards vehicles parked on the other side of the road.
10. The appellant's vehicle first struck a parked Nissan Qashqai a glancing blow. It then struck a second vehicle parked close behind the first, a Ford Fiesta belonging to the first victim Radmila Roblesova. Her vehicle was partly on the pavement, parked facing the appellant's oncoming vehicle. She was standing by the driver's door of her car on the carriageway about to get in. She was struck by the appellant's vehicle which effectively pinned her against her vehicle causing her very serious injuries. Such was the speed of the appellant's vehicle and such was the force of the collision that the Ford Fiesta was pushed back a distance of 12 metres. The Ford Fiesta struck the second victim, a pedestrian who had been walking along the footpath, Irena Tilbury. She was walking home from the factory having completed her shift. Because the Ford Fiesta was parked half on the pavement, Miss Tilbury had to walk out into the road to get round it. As she did so she saw the appellant's vehicle coming diagonally across the road straight towards her. She describes it as travelling at great speed. She started running but the Fiesta was pushed into her by the force of the collision with the appellant's vehicle. She too suffered serious injuries.
11. The appellant's vehicle then veered back onto the left-hand side of the road and ended up in the hedge. The airbag had inflated. Technical evidence confirmed that the speed of the vehicle at the point when the airbag inflated was at least 28 mph. The inference must be that the speed was even higher before that at the time of the collisions. There was no evidence that the appellant had braked at all.
12. The appellant was able to walk away from the crash. He remained at the scene. He walked over to Miss Tilbury who was lying on the verge. She asked him what he had done. He said: "I just lost control."
13. The police were soon on the scene. When asked for his explanation, after caution the appellant said that he had started the car and put it in first gear; he could not remember if he changed into second gear, he then felt something "catch the direction of his car" and he could not control it. He hit the first car on both doors before hitting the second car. He did not see the lady as his airbags had activated. He was not aware of any mechanical defects with his vehicle, which had been MOT tested the previous month. He said he had no medical conditions that might have affected his driving. He was taking no medication. He was tested for alcohol and drugs, all with negative results.
14. Miss Roblesova was taken by air ambulance to Addenbrooke's Hospital in Cambridge. She suffered life-threatening injuries. There were serious internal injuries to the liver, the kidney and the lung. There was a right pneumothorax and a right haemothorax. There were complex sacro-pelvic fractures, a spinal fracture, fractures of the left tibia and fibula and fractures of the right sixth to twelfth ribs. She was transferred to the neuro-critical care unit. She underwent a total of six operations. She was in hospital for several months. Her left leg is now permanently shorter than her right leg. In her

impact statement, made six months later, she described continuing neurological pain in her lower body. She will require further surgery and there will be long-term pain and suffering in the spine and pelvis and probably permanent neurological deficit in both legs. She was 29 years old at the time and used to go to the gym three times a week. She was now wholly dependent on her boyfriend. At the time of her impact statement she was confined to a wheelchair whenever her boyfriend took her out. She would never be able to return to her pre-accident work at the factory which involved standing on the production line for nearly 12 hours every shift. It was uncertain what employment she would ever be able to hold down. She was fearful of roads. She had nightmares and struggled to sleep.

15. Miss Tilbury's injuries were fortunately less serious but still severe and debilitating. She was taken to hospital at King's Lynn. She suffered a fractured right wrist which was in plaster for six weeks and caused her a great deal of pain. Her back was put in a back slab. At the time of her impact statement six months later her wrist was still weak and swollen and painful if she tried to lift anything. She had a cut to the top of her head which was glued. Her left thumb was swollen and bruised and she lost strength in it. She had pain in her back which was extremely uncomfortable and required injections of pain relief. She was now very scared whenever she heard a car going fast or revving its engine. She was very nervous crossing roads, especially having to walk three miles to the factory each day for work. She was off work for around three months and reliant for that period on her husband to do all the household chores.
16. The appellant was formally interviewed by the police under caution on 23 October 2019. He said that he started driving up the road in a straight line and then felt the car go to the right. He tried to fix it, as he put it, but he could not do so as the steering wheel was not responding. He said that at the time of the collision his speed was a maximum of 10 mph. The vehicle suddenly veered to the right and he was unable to correct it. He had not had time to brake. He did not know that as a learner driver the supervisor in the car with him had to have held a licence for three years. He said he did not display L-plates because his wife also drove the vehicle and he did not want people to think his wife was a learner driver.
17. There was a pre-sentence report. The appellant expressed remorse when interviewed by the probation officer but frequently sought to minimise and excuse his behaviour. He could not explain what had happened to cause the collision and was still suggesting that the accident occurred as a result of mechanical issues with the vehicle. The author of the report expressed her belief that the appellant had been showing off in driving in this way, although the appellant refuted that suggestion. He had continued to work at the factory full time. He and his wife had borrowed large sums of money to pay for their wedding and for the baptism of their daughter, and to pay for medical expenses for an elderly family member in Romania.
18. In mitigation, his counsel, Miss Allison, submitted to the judge that the appellant was genuinely remorseful and deeply regretted the suffering he had caused the victims. The appellant and his wife had come to this country for a better life. They worked full time on opposite shifts at the factory. They had no family in this country and no close friends to help with childcare. The debts they had incurred were very considerable.
19. In opening the facts of the case, prosecuting counsel suggested that these could be regarded as Level 3 offences under the equivalent Sentencing Council Guideline for

Causing Death by Driving. That was also the submission made to the judge by Miss Allison on behalf of the appellant.

20. In passing sentence, the judge observed that the appellant's aggressive and dangerous driving that morning had changed the lives of his victims for ever. For absolutely no reason which had ever been satisfactorily explained the appellant pulled away from the kerbside with wheel spinning acceleration. Unable to control his vehicle he had clipped one vehicle and then Miss Roblesova's Fiesta, pinning her between the two vehicles. The judge observed that the appellant's speed at impact was not less than 28 mph and must therefore have been much higher even over the short distance he had driven. That was clear evidence of his extreme acceleration as he set off from the kerb side. The episode may have been short, the judge said, but it had devastating results. Only at a comparatively late stage had the appellant accepted that the fault of the collision was entirely his own, rather than some mechanical defect in his vehicle. The judge accepted that the appellant was a hard-working man and a loving husband and father. The impact of the custodial sentence on his family, emotional and financial, would be considerable. The judge took into account that the appellant was a man of good character and that he would be serving his sentence in the harsher prison conditions caused by the pandemic.
21. We note that the judge did not indicate in his sentencing remarks that he accepted counsel's joint submission that it should be regarded as a Level 3 case. The sentence the judge passed clearly suggests he did not accept that analysis.
22. In her written submissions, Miss Allison argued that by reference to the causing death guideline this was indeed a Level 3 case. There was a brief but obvious danger arising from a serious, dangerous manoeuvre with a failure to have proper regard to vulnerable road users, namely pedestrians. For an offence of causing death by dangerous driving the starting point under the guideline for Level 3 is three years' custody with a range of two to five years. Miss Allison submitted that with a proportionate reduction to reflect the fact that this was not a causing death case, the proper starting point here was around 12 months' imprisonment, increased slightly to reflect the aggravating factor of two seriously injured victims and the provisional licence offence.
23. In her written submissions, Miss Allison helpfully drew our attention to the leading case of R v Dewdney [2014] EWCA Crim 1722, [2015] 1 Cr.App.R (S) 5 in which Treacy LJ giving the judgment of the court gave guidance on the approach to sentencing for what was then the new offence of causing serious injury by dangerous driving. He confirmed that it was helpful to have regard to the guideline for causing death by dangerous driving in assessing the level of offending. He observed that because the maximum penalty was only five years, compared with 14 years for causing death by dangerous driving, there will of necessity be a degree of compression in the sentences available to the court to reflect different types of dangerous driving causing seriously injury.
24. Miss Allison also referred us to other examples of cases where this court has reduced sentences for this offence which she submitted may assist in gauging the proper level of sentence in the present case. In R v Jenkins [2015] EWCA Crim 105, [2015] 1 Cr.App.R (S) 70, the defendant had pleaded guilty to causing serious injury to two victims. The judge imposed two consecutive sentences of three years' imprisonment. This court held that consecutive sentences were wrong in principle and took four-and-a-half years as its starting point for the two offences before credit for plea. It was a worse case than the present in that the defendant had been driving at 90 to 100 mph

in a 30 mph area, showing off and thrill-seeking. The driving was deliberate and prolonged. He held only a provisional licence and was uninsured. He had a bad motoring record.

25. In R v Howsego [2016] EWCA Crim 120, the defendant pleaded guilty to a single offence of causing serious injury by dangerous driving and also aggravated vehicle taking and other associated motoring offences. He drove at excessive speed on the wrong side of the road and collided with an oncoming vehicle. He was drunk. He had previous driving convictions and was disqualified at the time. The judge took a starting point of four years before credit for plea. This court determined that the correct starting point after trial before any mitigation was in the region of three-and-a-half years.
26. In her oral submissions, which were most attractive and focused, Miss Allison submits that in the present case the judge must have started at around four years before allowing credit for the appellant's personal mitigation in reaching a sentence of three years nine months before credit for plea. She submits that this was simply too high.
27. We have given all these submissions the most careful consideration. The cases Miss Allison has cited to us are not guideline cases, they are merely examples. Each case necessarily turns on its own facts. In giving leave the single judge expressed doubt as to whether this could properly be described as Level 3 offending, whilst accepting that it was at least arguable that the judge's starting point was too high.
28. We agree that this was not a Level 3 case. We think it was plainly within Level 2. This was driving that created a "substantial" rather than merely a "significant" risk of danger. It was driving characterised by greatly excessive speed as the appellant drove off, such speed that he lost control and drove across the road into parked cars and pedestrians with catastrophic consequences. The starting point under the guideline for Level 2 where a single death is caused is five years' custody with a range of four to seven years. Here it was a grossly aggravating factor that there were two victims who were seriously injured, one of them very seriously indeed with life-changing results. It was also an aggravating factor that the appellant was a provisional licence holder, driving unaccompanied by a qualified supervisor and without L-plates. This aggressive high speed driving took place when there were pedestrians and cars around at a busy time of day with people leaving and arriving at the factory as one shift ended and another began. Like the sentencing judge we regard this as a very bad case of its kind.
29. As the authorities acknowledge, because of the five-year maximum there is bound to be compression or bunching at the upper end of the range, not least given the wide variety of circumstances and factors which may make any given case particularly serious. We think that even with the limited mitigation of the appellant's good character and remorse and his personal circumstances, the judge's starting point of three years nine months properly reflected the seriousness of the case and the aggravating features identified, in particular the fact that there were two victims who were seriously injured.
30. Despite Miss Allison's valiant submission, we are unable to conclude that the sentence was manifestly excessive and the appeal must therefore be dismissed.

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