No: 201902038/A1-201902078/A1-201903333/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019] EWCA Crim 1704

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 20 September 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE WHIPPLE DBE

MR JUSTICE SOOLE

R E G I N A

v

RAHEEL AHMED
FAYZ AHMED
ASHNAUR RAHMAN

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Mr N Worsley appeared on behalf of the **Appellant Raheel Ahmed**
Ms A Parnham appeared on behalf of the **Appellant Fayz Ahmed**
Mr C Quinn appeared on behalf of the **Applicant Rahman**

Ms K Mercer appeared on behalf of the **Crown**

J U D G M E N T
(Draft for approval)

LORD JUSTICE FLAUX: On 11 April 2019, following a trial before His Honour Judge Batiste and a jury in the Crown Court at Leeds, these three appellants (now all aged 20) were convicted as follows. Fayz Ahmed was convicted on count 1 of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861, Raheel Ahmed and Ashnaur Rahman were acquitted on count 1 but convicted on count 2 of causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988. On 22 May 2019 they were sentenced by the same judge as follows. Fayz Ahmed was sentenced to 10 years' detention in a young offender institution, Raheel Ahmed to 20 months' detention in a young offender institution and Ashnaur Rahman to 18 months' detention in a young offender institution. They were all also disqualified from driving for various periods.

Fayz Ahmed and Raheel Ahmed now appeal against sentence with the leave of the single judge. The application for leave to appeal against sentence by Ashnaur Rahman has been referred by the Registrar to the Full Court following leave being given to the other appellants by the single judge. We grant the relevant extension of time for making that application out of time.

The facts can be summarised as follows. On Saturday 18 June 2016 the victim, Dmitrijs Purgalvis, arrived at Birstall Retail Park, located off junction 27 of the M62. He met his girlfriend, Marta Erdmane, from her work and the two returned to his BMW car at around 1800 hours. Mr Purgalvis and Ms Erdmane were both seated in the rear of the BMW when Fayz Ahmed, who was an inexperienced young driver having only recently passed his driving test and who was driving his mother's Seat Leon car, struck Mr Purgalvis's car while attempting to reverse into another car parking space.

Fayz Ahmed had two passengers with him, Raheel Ahmed seated in the front passenger seat and Ashnaur Rahman in the rear. When Mr Purgalvis got out to inspect the damage and exchange details and speak to Fayz Ahmed he saw that the Seat Leon was pulling away.

The judge found in his sentencing remarks, as he was entitled to do for reasons we will elaborate later in this judgment, that Mr Purgalvis was not aggressive, nor did he behave in a racist manner. However he did shout for the car to stop and he ran after it. The judge also found in his sentencing remarks, as he was entitled to do, that when Mr Purgalvis came to the passenger side window which was partially or completely open, he was held in place by Raheel Ahmed and punched by Ashnaur Rahman. Fayz Ahmed then drove at grossly excessive speeds around the car park where there were not only parked cars but a number of shoppers walking to and from their cars. Mr Purgalvis was heard by members of the public pleading to be allowed to get off but he could not because he was being held by Raheel Ahmed. As the judge found, whilst he was still driving at considerable speed, Fayz Ahmed manoeuvred his car extremely close to the back of a parked station wagon, knowing that this would result in a high speed collision between Mr Purgalvis and that vehicle. Mr Purgalvis's body collided with that vehicle and he fell to the floor. The appellants drove off knowing he must have sustained serious injuries.

Mr Purgalvis was bleeding heavily from the femoral artery and could have died were it not for the quick intervention of members of the public. He was taken to Leeds General Infirmary where he regained consciousness four days later. He had sustained multiple injuries including traumatic brain injury, facial fractures, a punctured lung, significant injury to the spleen and internal bleeding and a minor crack to his lumber spine, a small crack in his pelvis, an open fracture to his right femur and a fracture to his forearm.

Following the incident Mr Purgalvis continued to suffer from intermittent headaches, low mood, low urinary tract symptoms and post traumatic head injury impairment which caused issues with his memory, concentration and anger management.

All three appellants were arrested at Fayz Ahmed's address later that evening. Fayz Ahmed was interviewed by the police on 20 June 2016 and said he had not intended to injure Mr Purgalvis. He denied hitting Mr Purgalvis's car and said that he thought Mr Purgalvis was going to carjack him. He claimed to have left the scene because he was frightened. Fayz Ahmed gave no comment during a second interview on 6 March 2017.

Raheel Ahmed was interviewed by police on 19 June 2016 and 6 March 2017 and gave no comment to all questions in both. Ashnaur Rahman was also interviewed on 19 June 2016. He denied being responsible for the assault on Mr Purgalvis. In further interview on 6 March 2017 he gave no comment.

The appellants were all 17 at the time of the offending and of previous good character. Through no fault of the appellants it was some 2 years before they were brought to court and although the case then progressed in the usual way, by the time of their conviction and sentence the best part of 3 years had elapsed since the offending.

The judge had the benefit of a victim impact statement from Mr Purgalvis dated 2 April 2019. This referred to his anxiety when out in public near cars and to the continuing physical impairment from which he suffers to which we have already referred.

There were pre-sentence reports in respect of Raheel Ahmed and Ashnaur Rahman. In the report from Mr Ahmed the writer recorded that he said he had merely been a passenger in the car and he took no responsibility for the offence. He showed some understanding of impact of the offence on the victim but did not consider himself accountable. He was assessed in the low risk category for re-offending and he was assessed as posing a medium

risk of harm to members of the public. The writer proposed a community order with unpaid work and curfews as an alternative to immediate imprisonment.

The writer of the report for Mr Rahman recorded that his version of events differed from that of the prosecution. He said that he wished he had told Fayz Ahmed to stop driving or had called the police himself. It was his view that he did nothing wrong but he understood why he had been found guilty. He took no responsibility for the offence. His age and immaturity played a role. He expressed some victim awareness. He was assessed as posing a low risk of reconviction and a medium risk of serious harm to the public and again, the writer of the report recommended a community sentence as an alternative to immediate imprisonment.

In sentencing the appellants the judge began by saying that during the trial he detected little or no remorse for the life-changing injuries caused to the victim. He then made a series of findings as to the factual matrix of what took place primarily because during the trial there were several areas of factual dispute as to what occurred. We have already summarised the findings he made and we will deal later in the present judgment as to why the submissions, principally by Mr Worsley for Raheel Ahmed that the judge was not entitled to make those findings, are misconceived. Having made those findings of fact the judge said that in reaching an assessment as to the appropriate sentences, he had considered four of the sentencing guidelines: the Sentencing Guideline for Assault in relation to Fayz Ahmed, the Death by Dangerous Driving Guideline, to provide assistance in relation to causing serious injury by dangerous driving, the Imposition of Community and Custodial and Community Sentences Guideline with regard to Raheel Ahmed and Mr Rahman and the Sentencing Children and Young People Guideline for all three defendants. He said that he had had particular regard to paragraphs 6.1 to 6.3 and 6.46 of

the latter Guideline.

The judge noted that the mitigation available was similar. They were all of good character and 17 at the time of offending. He also noted that Fayz Ahmed was only four-and-a-half months off his 18th birthday and had appeared to be a mature young man for his age at the time that he had given evidence.

There had been considerable delay (of nearly 3 years) before sentence. The judge said some of that delay did not fall at the door of the defendants and that was something the judge took into account. Their behaviour was out of character and there had been no further offending since. The judge had read all of the documents provided in mitigation. Fayz Ahmed was married, had a university degree and had some medical issues. Raheel Ahmed was employed and had some type of caring role. Ashnaur Rahman was intelligent and considered a low risk of re-offending. However, the judge said he had to sentence for what in his judgment were extremely serious offences of their type. He took account of the fact that Raheel Ahmed and Ashnaur Rahman were not the driver of the car but both of them had provided substantial assistance and encouragement to Fayz Ahmed.

It was agreed in relation to the section 18 offence that it was in category 1 of the relevant Assault Guideline. There was greater harm as the injury was serious in the context of the offence. The judge said that he had carefully considered the victim impact statement from Mr Purgalvis and had heard evidence from him and was satisfied that Mr Purgalvis had suffered permanent and life-changing injuries. He was satisfied that there was higher culpability in Fayz Ahmed's case. He had used his car in the circumstances as an extremely serious weapon and he had a leading role in the group behaviour. The starting point for an adult was 12 years with a range of 9 to 16 years' detention. There were other aggravating features: the ongoing effect on the victim, although the judge was conscious

not to double count; the presence of others in a public place and the high risk of injury to those others. That took the starting point to 15 years. The judge then took account of factors which reduced the sentence: Fayz Ahmed's age at the time; his good character; the delay and his mitigation and reduced the sentence to 10 years' imprisonment. The discretionary disqualification from driving was 5 years and the judge imposed an extension period of a further 5 years under section 35A of the Road Traffic Offenders Act 1988.

The maximum sentence for causing serious injury by dangerous driving for an adult offender was 5 years. At the time of the offence both Raheel Ahmed and Ashnaur Rahman were children and this was not a grave offence in law (a reference to section 91 of the Powers of Criminal Courts (Sentencing) Act 2000). The maximum sentence, if they had been convicted when 17, was 2 years.

Having considered the Sentencing Guidelines the judge accepted it would be inappropriate to go above that level but as is said in the Guidelines it may well be appropriate to pass sentences close to the maximum (a reference to paragraph 6.3 of the Guideline on Sentencing Children and Young People). The judge continued that he had to take account when sentencing them, as with Fayz Ahmed, of the sentence that he would have imposed if they were still 17 but he was entitled (as they were now adults), as set out in the Guideline to take account of punishment and deterrence (a reference to paragraph 6.2 of the Guideline on Sentencing Children and Young People). Appropriate punishment, the judge considered, could only be achieved by an immediate custodial sentence.

He took into account the Causing Death by Dangerous Driving Guideline for assistance. Under that this would have been a high level category 1 offence. It was a prolonged and deliberate case of very bad driving which included grossly excessive speeds in an area filled with family shoppers and speeds assessed by Fayz Ahmed himself as 40 to 50 miles

an hour. There had been a failure to stop in order to avoid apprehension.

The mitigating features were the fact that they were both 17 at the time, their lack of driving experience and in fact neither of them had been the actual driver. However they both encouraged and facilitated the dangerous driving, Raheel Ahmed by holding the victim in place on the car and Rahman by punching him and both of them by their shouts. For Raheel Ahmed, with those aggravating features, if he had been an adult the sentence would have been 30 months' imprisonment. Taking account of the mitigation, his age and the delay in his good character, the judge brought the sentence down to 20 months' detention in a young offender institution. The discretionary qualification from driving for him was 2 years and the judge imposed an extension period of a further 10 months under section 35A of the Road Traffic Offenders Act 1988.

With Rahman the judge drew a small distinction from Raheel Ahmed that he could not be satisfied that Rahman was holding on to Mr Purgalvis. If he were an adult the sentence would have been 27 months' imprisonment. Taking account of the same mitigating features as with Raheel Ahmed, the sentence was reduced to 18 months' detention in a young offender institution. The discretionary qualification from driving for him was 2 years and the judge imposed an extension period of a further 9 months under section 35A of the Road Traffic Offenders Act 1988.

The principal submission advanced by Ms Andrea Parnham, on behalf of Fayz Ahmed, is that the starting point for an adult offender of 15 years was too high because the judge had placed too much weight on aggravating features. She submitted that the ongoing effect on the victim was relatively minor. The consultant vascular surgeon could not identify any injuries which would reduce his life expectancy. Whilst it was accepted that there was some ongoing effect it was not such as to amount to an aggravating feature, increasing the

starting point so the judge had double counted.

She submitted that the judge had erred in concluding that the risk of injury aggravated the sentence to the extent that he found. Whilst it might be correct that this is the largest and busiest retail park in West Yorkshire the offending occurred at 6pm when many shops were closed or closing. It could be seen from the CCTV that the car park was not busy. There was no evidence of anyone having to avoid this appellant's car.

She also submitted that the judge had failed to give sufficient weight to the mitigating features. In relation to age the judge had been wrong to have regard to Fayz Ahmed's apparent maturity at the time he gave evidence. This led the judge to fail to appropriately discount the sentence in accordance with the guidance in paragraph 6.46 of the Guideline on Sentencing Children and Young People.

The judge had also failed to give proper weight to the delay which could in no way be said to be Fayz Ahmed's fault. He was now 20, married and studying with a degree, with a part-time job. It was almost tragic that he had flourished so well in the time it took the prosecution to bring the charges.

Ms Parnham referred to the substantial number of references available to Fayz Ahmed and the fact that his family were supporting him, submitting that it was not often in a case of this kind that the defendant was a young man of such outstanding character with a bright, promising future. The judge had failed to have sufficient regard to this mitigating feature.

Whilst Ms Parnham accepted that each case turns on its own facts, she relied upon the decision of this Court in R v Lashley [2017] EWCA Crim 260: the defendant there had deliberately driven a car taken without consent at her victim with whom she had had a previous altercation. She had then deliberately reversed the car back over him breaking his legs. This court reduced the original starting point of thirteen-and-a-half years to 12 in a case

which Ms Parnham submitted had more aggravating features than the present and nothing like the mitigation available to this appellant. That case demonstrated that the 15-year starting point here was too high.

Attractively though these submissions were presented, we cannot accept them. The judge was justified in concluding that if the appellant had been an adult, a starting point close to the top of the sentencing range for a category 1 section 18 offence was appropriate. The injury sustained by the victim were extremely serious and the judge was entitled to conclude, on the evidence he had heard including from Mr Purgalvis himself, that they would have an ongoing effect on him, which was an aggravating feature. Although the retail park may have been quieter than the middle of the day it was still relatively busy with cars in the car park and people returning to their vehicles along the roadways down which the appellant drove at excessive speed. This included children (at least one in a pushchair) as can be seen from the CCTV footage. To drive at speeds of 40 to 50 miles an hour in that car park was to show reckless disregard for the risk of injury to others which the judge was entitled to conclude was a seriously aggravating feature.

We also consider that there is nothing in the submission that the judge failed to take sufficient account of the available mitigation. In relation to the appellant's age the judge rightly noted that he was four-and-a-half months short of his 18th birthday when this offence occurred. From this it follows that he was not necessarily entitled to the full one-third discount for age to which paragraph 6.46 of the Guideline on Sentencing Children and Young People refers.

The judge stated expressly that he had regard to that paragraph, the wording of which makes it clear that the one-half or one-third discount from the adult sentence is in no sense obligatory but a discount the court *may* consider appropriate. The judge clearly also had

regard to the extensive delay for which the appellants were not to blame and to this appellant's positive good character and the progress he had made in life since the offending. In our judgment the overall one-third discount of 5 years from the sentence which would have been passed on him as an adult gave sufficient weight to all matters in mitigation on which Ms Parnham relies.

Whilst as Ms Mercer, on behalf of the prosecution accepts in her respondent's notice, there are certain similarities between this case and Lashley, we consider that there are aspects of this case which make it graver offending: the driving at excessive speed through a car park which people were crossing, with the serious risk of injury that entailed, continuing that driving whilst the victim was pleading to be released and the deliberate manoeuvring of the car, as Ms Mercer put it, to peel the victim from it. In any event, as Ms Mercer points out, the appropriate comparison is not between the 12-year starting point before credit for guilty plea (not available here) arrived at by this court in Lashley and the 15-year starting point for an adult offender here but between the 12-year figure after trial in that case and the 10-year sentence passed by the judge after trial here. That sentence cannot be said to be excessive, even if the comparison is appropriate, given, as is accepted, that each case turns on its own facts.

In our judgment, the sentence passed by the judge of 10 years' detention was not manifestly excessive and the appeal by Fayz Ahmed is dismissed.

Turning to the appeal by Raheel Ahmed, on his behalf Mr Worsley placed particular reliance in his written advice on the judge's written route to verdict which left to the jury that they could convict Raheel Ahmed (and for that matter Mr Rahman) of causing serious injury by dangerous driving if they encouraged or assisted Fayz Ahmed on the basis of the following:

(a) holding the victim onto the car and/or;

(b) shouting abuse and/or;

(c) laughing and/or;

(d) punching the victim and/or

(e) shouting "get him off".

He submitted that because it was not clear from the jury's verdict which of these bases or combination of bases they had accepted, the judge should have sentenced Raheel Ahmed on a basis which gave him the benefit of the most favourable interpretation of the verdict. However erroneously, this is not what the judge had done. Instead in his sentencing remarks he had purported to make findings of fact which were not on the most favourable interpretation of the verdict. Mr Worsley went so far as to provide the Court with a red line copy of the Criminal Office Summary crossing out passages which he submitted did not put the most favourable interpretation on the verdict.

With respect to counsel this point is misconceived. As the single judge recognised, the judge was entitled to make the findings of fact which he did in his sentencing remarks. The applicable legal principles were authoritatively stated by this Court after an extensive review of the earlier authorities in R v King [2017] EWCA Crim 128; [2017] 2 Cr App R(S) 6. At paragraph 31 of the judgment, it was said:

> "In our view the correct approach by the judge, after a trial, to the determination of the factual basis upon which to pass sentence, is clear. If there is only one possible interpretation of a jury's verdict(s) then the judge must sentence on that basis. When there is more than one possible interpretation, then the judge must make up his own mind, to the criminal standard, as to the factual basis upon which to pass sentence. If there is more than one possible interpretation, and he is not sure of any of them, then (in accordance with basic fairness) he is obliged to pass sentence on the basis of the interpretation (whether in whole or in relevant part) most favourable to the defendant."

In our judgment the judge correctly adopted that approach. Given that, as Mr Worsley accepts, there was more than one possible interpretation of the jury's verdict, the judge had to make up his own mind, which he did by making the findings of fact he did. Clearly he did so to the criminal standard given his reference in a number of places in his sentencing remarks to being satisfied about the matters he found. Where he was not sure (as in whether Mr Rahman was holding onto the victim) he gave him the benefit of the doubt.

Mr Worsley submits that the starting point taken by the judge should have been far lower than 30 months which the judge took for an adult offender, in the region he submitted of 18 months to account for the serious injuries to the victim but also the actual level of involvement to the appellant. To the extent that this submission is based on the misconceived point we have just discussed it is equally misconceived. In our judgment, given the seriousness of the dangerous driving and the injury caused, on the basis of the judge's findings as to this appellant's involvement, which the judge was for the reasons we have given entitled to make, his starting point for an adult offender of 30 months cannot be faulted.

Like Ms Parnham, Mr Worsley submits that the judge took insufficient account of the mitigating features of this appellant's case, his age, the delay and his positive good character. Mr Worsley relied on the passage at paragraph 6.49 of the Guideline on Sentencing Children and Young People, which talks of custody being the last resort for children and young people given the high reconviction rate and the risk of self-harm and suicide. He relied upon this appellant's exemplary behaviour since the incident. This was an unusual offence of a kind that would not be repeated. On this basis he submitted that any sentence of imprisonment should have been suspended and that in any event the sentence of 20 months failed to give sufficient weight to the youth of the appellant, the delay and that

good character and exemplary behaviour.

In our judgment, the judge did pay sufficient regard to the Guideline on Sentencing Children and Young People. Raheel Ahmed was nearly seventeen-and-a-half at the time of the offending and in those circumstances, as in the case of Fayz Ahmed, he was not necessarily entitled to the full one-third discount for age to which paragraph 6.46 of the Guideline on Sentencing Children and Young People refers and, as we have already noted, that discount is in no sense obligatory. On any view this was serious offending. Although Raheel Ahmed was not the driver of the car, he encouraged the driver by holding Mr Purgalvis onto the car. Had he not done so, Mr Purgalvis would not have suffered the injuries he did. The judge was right to conclude, applying paragraph 6.2 of the Guideline, that only an immediate custodial sentence was appropriate. This was not a case in which a suspended sentence would have been appropriate.

Mr Worsley drew attention to the fact that the judge had said that some of the delay did not fall at the door of defendants, whereas in fact they were not to blame for any of the delay. Accordingly he submitted the judge should have given a fuller discount for delay.

It is unclear what the judge had in mind in terms of responsibility for the delay, but there is nothing in the sentencing remarks to suggest that he reduced any discount for delay because he thought the defendants were partly to blame. Overall we consider that the sentence of 20 months, which gave a full one-third discount from the adult sentence, gave sufficient weight to the issues of age, delay and good character and cannot be said to be manifestly excessive. This appeal is dismissed.

On behalf of Ashnaur Rahman, Mr Quinn essentially makes the same points as Mr Worsley. We have already explained why the submission that Raheel Ahmed and Ashnaur Rahman should have been sentenced on the basis of the most favourable interpretation of the jury's

verdict, which is a submission which Mr Quinn also makes, is misconceived. Mr Quinn makes the point that Ashnaur Rahman was slightly younger than the other appellants having had his 17th birthday only 2 months before the incident. It does not seem to us that this minor disparity in age required the judge to approach the sentencing of this applicant in a different way. As we have already said, he referred expressly to paragraph 6.46 of the Guideline and the suggested discount referred to is not obligatory. The slightly lower sentence of 18 months reflected sufficiently that Mr Rahman's offending was not quite as serious as that of Raheel Ahmed since, as the judge said, he could not be sure that he was holding onto the victim thereby giving Mr Rahman the benefit of the doubt on that point.

In his oral submissions Mr Quinn placed particular emphasis on the fact that in given all the mitigating factors and the age of the applicant, the judge should have suspended the sentence. He referred us to the table of factors at page 8 of the Guideline on Imposition of Community and Custodial Sentences on the basis of which he submitted that the judge had been wrong not to suspend the sentence. We do not consider that there is any merit in that submission. One of the factors set out on page 8 of that Guideline which indicates that it would not be appropriate to suspend a custodial sentence is "Appropriate punishment can only be achieved by immediately custody". This was clearly a case in which the judge correctly concluded that appropriate punishment could only be achieved by an immediate custodial sentence.

Overall, we consider that the sentence of 18 months, which gave a full one-third discount from the adult sentence of 27 months, gave sufficient weight to the applicant's age and good character and to the delay in prosecuting the case. That sentence cannot in any sense be manifestly excessive. This application for leave to appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the

proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk