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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 2021/01501/A3



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 14 September 2021

LADY JUSTICE CARR DBE

MR JUSTICE MARTIN SPENCER

MR JUSTICE BUTCHER

REGINA

V

CRAIG ALLEN

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MR M HAYTON QC appeared on behalf of the Appellant.

JUDGMENT

LADY JUSTICE CARR:

Introduction

1. On 20 April 2021 the appellant, now 47 years old, pleaded guilty mid-trial before HHJ Adkins, the Honorary Recorder of Durham ("the Judge") and a jury, to two counts of causing serious injury by dangerous driving contrary to section 1A of the Road Traffic Act 1988. The following day the Judge sentenced him to 38 months' imprisonment on each count, such sentences to run concurrently. He was also disqualified from driving for a total of 67 months.
2. This is his appeal against sentence, for which purpose he has had the considerable benefit of representation by Mr Hayton QC.

The Facts

3. On 13 September 2018 the appellant was driving his Kia Venga southbound on the A68 approaching Toft Hill in the Witton-le-Wear area of County Durham. His 16-year-old son was asleep in the front passenger seat. Nicholas Copson was driving his Vauxhall Astra northbound in the opposite direction. Both vehicles were driving at around 60 miles per hour, which was the operative speed limit. The weather was fine and dry with clear visibility.
4. The A68 is a single carriageway road. At one point the carriageways on both sides narrow to allow for a slip road, marked by a chevroned zone in the middle of the carriageway. This permits vehicles travelling north to turn right into a farm entrance. The road markings are broken white lines either side of the chevroned area.
5. As the appellant approached the farm track entrance a road sign to his left warned of the possibility of farm vehicles in the road. There was also a "SLOW" sign painted on the carriageway and three white arrows pointing to the left to warn drivers in the appellant's position to stay left and in their lane. The road at this point had a 5% upward slope.
6. Ahead of the appellant were a car and box van travelling at 45 - 50 miles per hour. As the appellant came up behind them he attempted to overtake them, pulling out into the centre of the carriageway as he approached the start of the chevroned area. At the same time Mr Copson was moving towards the chevroned zone himself, indicating right.
7. The appellant said in evidence that he began the overtaking manoeuvre believing the road ahead of him to be clear but as he entered the chevroned area he saw Mr Copson's vehicle. A witness driving behind the appellant had said that, as she saw the appellant's car begin to overtake she immediately thought that there might be a crash, as she had seen Mr Copson's car positioned towards the white lines.
8. The cars being driven by the appellant and Mr Copson collided head-on. The collision was described as an "explosion" by a witness. The cars were destroyed.
9. Mr Copson suffered multiple and catastrophic injuries. These included numerous bilateral rib fractures, a sternal fracture, a pneumothorax, bilateral pulmonary contusions,

a complete transection of his thoracic spine and significant injuries to his legs which eventually necessitated bilateral amputation. He was in hospital for 13 months. At the time of sentence he was back in hospital with another infection. He is paralysed from the chest down. As the victim personal statements reveal, his life and that of his family have been destroyed.

10. The appellant's son also suffered serious injuries including fractures to his spine and damage to his spleen and liver. The appellant himself was injured, suffering internal injuries including damage to his bowel that have left him requiring the use of a colostomy.

Sentence

11. The Judge proceeded to sentence without a pre-sentence report. We agree that one was unnecessary. The Judge commented that this offending involved a single dangerous manoeuvre with terrible consequences. Had it been an offence of causing death by dangerous driving, the Judge said that he would have placed it within level 1 of the Sentencing Council Guideline for Causing Death by Dangerous Driving ("the Guideline"). Though there was a single act of dangerous overtaking, that had to be seen, said the Judge, in the context of road markings that clearly warned southbound drivers of the approaching hazard. The appellant had made a deliberate decision to ignore those markings. That, combined with harm that was the worst that could possibly be envisaged, put the case in the top category.
12. The Judge indicated that sentence after trial would have been 40 months' imprisonment. He then applied 5% credit for the appellant's very late guilty plea.

Grounds of Appeal

13. Mr Hayton submits that the Judge erred in categorising this case as level 1 offending, producing a notional starting point after trial of 8 years that was far too high. The driving here was not prolonged or persistent, nor could it be described as a deliberate course of very bad driving. It did not involve alcohol or drugs. Emphasis is placed on the fact that the signage in question was not mandatory and only advisory. The offending driving took place over the course of only a matter of seconds.
14. It is submitted that the offending was more accurately to be placed within level 3 of the Guideline. Whilst recognising the limited utility of comparisons with the facts of other cases Mr Hayton also invites us to draw support for his submissions by reference to the facts of R v Dewdney [2014] EWCA Crim 1722 ("Dewdney") and R v Sandulache [2015] EWCA Crim 1502. These cases are said to have involved instances of worse driving in circumstances where the notional terms after trial of four-and-a-half years had been accepted as proper.

Discussion

15. The introduction of the new offence of causing serious injury by dangerous driving reflected a decision by Parliament to meet a gap identified by the courts and in public concern between the maximum sentence of two years for dangerous driving then

applicable and the maximum sentence of 14 years for causing death by dangerous driving. It had been felt for many years that legislation failed to provide for circumstances in which not only had the driving been of a character likely to cause injury to life and limb, but had actually caused serious and significant injury to others. The result was the new offence which carries a maximum of five years' custody.

16. There are no Sentencing Council Guidelines for the offence of causing serious injury by dangerous driving. However, as identified in Dewdney at [20], it can be helpful to have regard to the Guideline, with downwards compression in the level of sentence to allow for the differences in the maximum sentences of 14 years and five years' custody respectively.

17. The Guideline reserves level 1 offending for:

"... the most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others."

18. The Guideline goes on to indicate that level 1 offences are likely to be categorised by:

- A prolonged, persistent and deliberate course of very bad driving AND/OR

- Consumption of substantial amounts of alcohol or drugs leading to gross impairment AND/OR

- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2."

(These determinants include alcohol or drugs, avoidable distractions, vulnerable road users, awareness of risk and seriously culpable behaviour.)

19. The starting point for level 1 offending is eight years' custody with a range of seven to 14 years.

20. Level 2 offending is driving that created a substantial risk of danger, with a starting point of five years' custody with a range of four to seven years. Examples given of level 2 offending include greatly excessive speed, gross avoidable distraction and driving whilst impaired through drink or drugs.

21. Level 3 offending is driving that created a significant risk of danger with a starting point of three years' custody with a range of two to five years. Examples given of level 3 offending include driving above the speed limit, driving when deprived of adequate sleep or rest, a brief but obvious dangerous from a seriously dangerous manoeuvre and driving whilst avoidably distracted. The starting point for level 3 offending and range overlap with level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors. Further, it is important to remember that the characteristics identified in the Guideline as likely to be present in

each level of offending are illustrative only and non-exhaustive in any event.

22. In the sense that the appellant made a conscious decision to act as he did, we can understand why the Judge concluded that the appellant deliberately decided to ignore the road markings warning southbound drivers of the approaching hazard. However, we accept the thrust of the submissions on appeal, namely that the appellant's driving did not fall properly to be characterised as the most serious offending falling within level 1: it was not prolonged or persistent driving; there was no question of drugs or alcohol and no material group of determinants of seriousness that in isolation or smaller number would place the offending in level 2. The signs that the appellant ignored were, as Mr Hayton emphasises, warning signs, and not mandatory signs such as double or solid white lines.
23. In our judgment, in so far as it is helpful to consider the Guideline at all, this was in broad terms driving that falls most readily to be categorised as level 2 offending, being driving that created a substantial risk of danger: it was a highly dangerous piece of uphill overtaking at substantial speed, involving a hatched area and with disregard of clear road sign warnings. If, contrary to that view, the gravamen was only the creation of a brief but obvious danger arising from a seriously dangerous manoeuvre so as to fall within level 3, then the significantly aggravating feature of the disregard of the warning signs would, in our judgment, be sufficient to lift the appellant's conduct to the very top of the range for level 3 offending, or into level 2 offending itself.
24. Adopting an approach that considers the levels and ranges set out in the Guideline, a starting point of five years (being the starting point for level 2 offending and the top of the range for level 3 offending) would then need to be compressed to reflect the sentencing regime applicable to the offence of causing serious injury not death, but also taking account of the fact that the injuries here were at the very upper end of harm for serious injury offences.
25. By way of aggravation there were multiple victims. By way of mitigation, the appellant had a good driving record; he and his son were both badly injured themselves and there were the pandemic conditions in prison to take into account.
26. However this may be a case where it is not particularly helpful to focus on the Guideline, given the legitimate debate as to where precisely the facts of this case fall within each of the levels there identified. Rather, it is better to consider the overall seriousness of the offending by reference to the appellant's culpability and harm set in the context of a maximum sentence of five years' custody. Against this background, we stand back and ask ourselves whether the overall resulting sentence of 38 months' custody was manifestly excessive.
27. In our judgment, as indicated, a notional sentence of 40 months before credit for guilty plea, achieved by reference to the starting point for level 1 offending was manifestly excessive. In our judgment, taking into account culpability and harm and the relevant aggravating and mitigating factors, a notional sentence of around 30 months' custody after trial was appropriate. After 5% credit for guilty plea the resulting sentence is one

of 29 months' custody.

Conclusion

28. For these reasons and to this extent, we allow the appeal. The sentences of 38 months' imprisonment on each count will be quashed. They will be substituted by a sentence of 29 months' custody on each count, again to run concurrently. We also make the corresponding adjustment to the period of disqualification. The discretionary period of 48 months' disqualification and the requirement for an extended re-test are not affected. However, the extension period under section 35A of the Road Traffic Offenders Act 1988 will be reduced from 19 months to 14 months and 15 days.
29. As the Judge said, no sentence can undo the suffering of Mr Copson and his family. We would emphasise that our decision to allow the appeal is not intended in any way to undermine the gravity of the appellant's offending and in particular the nature of the harm, the catastrophic nature of Mr Copson's injuries and their effect on the lives of Mr Copson and his family. These events serve to underscore the dreadful and lasting consequences that can accompany even only isolated acts of dangerous driving.

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