

IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2023] EWCA Crim 1436

CASE NO: 2023 01928 A1



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 15 November 2023

Before:

LORD JUSTICE MALES

MR JUSTICE JOHNSON

RECORDER OF LEEDS
HIS HONOUR JUDGE KEARL KC

REX

v

JACK KENNETH DARREN LOMAS

Computer Aided Transcript 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)

MR ADAM WATKINS appeared on behalf of the Appellant
MS RACHEL FAUX appeared on behalf of the Crown

J U D G M E N T
(Approved)

LORD JUSTICE MALES:

1. This is an appeal by Jack Lomas, aged 28, against his sentence of 9 years' imprisonment for causing death by dangerous driving. The deceased was Mortimus Roy Jones, an 86-year-old man. A concurrent sentence of 2 years and 8 months' imprisonment was also imposed for causing serious injury by dangerous driving. The appellant pleaded guilty to these offences in the Crown Court at Minshull Street in Manchester on 4 May 2023 and was sentenced by Her Honour Judge Neild on 8 June 2023. Other orders were also made, including disqualification from driving for a period of 13 years and 2 months and until an extended retest was passed. The appellant had indicated his guilty plea in the magistrates' court at an early stage. There was a delay of about two years in bringing the case to the Crown Court, probably because it took time for investigation reports to be compiled. The appellant appeals with the leave of the single judge.

The Facts

2. The appellant had been drinking in a public house on the evening of 27 August 2021. Shortly before 11.30 pm he left the public house together with a group of friends. The appellant got into his BMW motor vehicle together with five passengers. One of these was in the front passenger seat; the remaining four got into the back. This meant that the vehicle was overloaded, with not enough seat belts for all the passengers in the back. One of the back seat passengers was Shannon Ratcliffe, who was to suffer serious injuries in the collision which was about to occur.
3. The appellant drove for about a mile. He did so at high speeds, calculated by an investigator as between 42-57 mph, although passengers in the car described the speed as feeling more like 70 mph. The speed limit on the road where the collision occurred was 30 mph. It was a single-carriageway residential road. The appellant was showing off to his passengers. He overtook two vehicles at high speed. He was deliberately swerving from side to side on the road. Some of his passengers were terrified. One female passenger was screaming at him to slow down, saying that she had a son. In fact more than one passenger asked the

appellant to slow down, but he ignored them. Very loud dance music was being played in the car.

4. Mr Jones's vehicle was emerging from a junction, attempting to turn right at the junction of Belmont Way (the road on which the appellant was travelling) and Short Street in a residential area of Stockport. Mr Jones was not in any way at fault for what occurred. The appellant's car was going so fast that Mr Jones would not have been able to see it coming round the corner as he pulled out. At the last moment the appellant slammed on his brakes, but it was too late. The vehicles collided. Mr Jones was seriously injured, as was Shannon Ratcliffe. The police attended, as did paramedics.
5. Mr Jones was taken to Manchester Royal Infirmary complaining of rib pain. He was later diagnosed with several rib fractures, a fractured sternum, and an accumulation of blood within the pleural cavity. On 30 August 2023 Mr Jones was transferred to the hospital's high dependency unit. Three weeks later on 22 September he underwent fixation surgery to six ribs. He developed a lower respiratory tract infection and was provided with ventilator support. His condition subsequently deteriorated and he died from his injuries on 16 October 2021, about seven weeks after the collision. The effect of the collision had placed extreme stress on his heart and lungs and, even though he had some underlying health issues, had hastened his death.
6. Ms Ratcliffe was also taken to hospital. She had sustained a fracture to her left mandibular condyle and a metacarpal fracture that required a splint. She also had soft tissue damage to her leg and a cut to her chin which required stitches in her mouth. Other passengers within the appellant's vehicle suffered more minor injuries.
7. When the police attended, the appellant was breathalysed. He knew that he was over the limit and told the officers that he would fail the test. As he put it, "I know I'm pissed, you know what I mean?" He duly failed. A further breath test after the appellant was arrested had a reading of 55 micrograms of alcohol, the legal limit being 35 micrograms.
8. On 14 February 2022 the appellant was interviewed by the police. He answered "no comment" to all questions asked.

Antecedents

9. The appellant was 26 at the time of the collision and is now 28. At the time of sentence the appellant had three convictions for six offences, spanning from 13 February 2017 to 13 September 2021. These included four driving offences, although the latest of these (a conviction for driving a motor vehicle with excess alcohol) was a conviction in the magistrates' court which related to the same incident as the causing death by dangerous driving with which we are now concerned and was therefore ignored for the purpose of sentence in this case.

The Victim

10. A victim personal statement from Mr Jones's son described the impact of his death on the whole family. Although 86 years of age, Mr Jones was still in employment and was fit, well and active in every way, full of enthusiasm for his life and living it to the full notwithstanding the health issues to which we have referred. His loss had deeply affected not only the family but the whole community in which he lived. He was plainly a remarkable man. It had been agonising for the family watching Mr Jones deteriorate over the seven weeks between the collision and his death while he underwent a series of operations and treatment. The family had been called to his bedside fearing the worst several times.

The Sentence

11. At the time of the collision the maximum sentence for causing death by dangerous driving was 14 years' imprisonment, although it has since been increased to life imprisonment. That increase was not retrospective and therefore the maximum sentence available to the judge on count 1 was one of 14 years. However, the change in the law which came into effect in June 2022 (thus between the date of the collision and the sentence in this case) had the

effect that the time to be served for this offence was two-thirds of the sentence imposed whereas previously it had been one-half. That change in the law applies to sentences imposed after that date, with the effect, therefore, that the sentence imposed on the appellant in this case is one of which he will have to serve two-thirds rather than one-half.

12. The judge was required to apply the then applicable sentencing guideline. He concluded that this offence fell within category A for culpability because the appellant had shown a flagrant disregard for the rules of the road and the risk of danger to others. The appellant's showing off and the high speed at which he drove, leaving his passengers fearful, with one in particular thinking that she was going to die, placed the offence, in the judge's view, within that category. At the relevant time category A had a starting point of 8 years with a sentencing range of 7-14 years for conviction after a trial. The judge identified a number of aggravating features. These included the injuries to Shannon Ratcliffe (which formed a separate count on the indictment), the fact that the appellant knew very well that he was over the limit for alcohol, and that he ignored the warnings of passengers within his vehicle who had urged him to slow down. In his favour were the fact that he had remained at the scene, had shown distress and genuine remorse, and had pleaded guilty at the earliest opportunity. This led the judge to say that after trial the sentence would have been 13 and a half years and that, discounting this by one-third to give credit for the guilty plea, the sentence would be 9 years' imprisonment. The judge imposed a concurrent sentence of 2 years and 8 months for the injuries to Shannon Ratcliffe.

Submissions

13. For the appellant, Mr Watkins submits that this sentence was manifestly excessive. He submits that the driving here was such that the offence should have been placed on the cusp of level 1 and level 2 in the guidelines. He submits that the dangerous driving was not prolonged - it lasted for only about a mile - and that the appellant's admission that he had taken alcohol was a point in his favour rather than an aggravating feature. He draws attention also to the delay between the offence and the sentence, a period during which the

appellant had demonstrated an increase in his maturity. He points out also that the sentence after trial and before giving credit for plea was only 6 months less than the statutory maximum applicable at the time. He recognises that there are some cases in which it is appropriate to pass a sentence at or close to the maximum but submits that is not the position here. The appellant is only lightly convicted, had never previously served a custodial sentence, had remained at the scene and had shown genuine remorse. In addition, as we have said, he had waited almost 2 years to be sentenced and during that time had increased in maturity. Mr Watkins submits also that we should recognise that the judge's intention was to impose a sentence of which the appellant would serve only half in prison, whereas the change in the law to which we have referred means that in fact two-thirds will have to be served.

Decision

14. The judge was plainly right to place this case in the highest category within the guidelines and to recognise that there were aggravating features, as she described, which justified a substantial increase from the category starting point of 8 years' imprisonment. In particular the sentence needed to take account not only of the tragic death of Mr Jones but also the serious injuries caused to Ms Ratcliffe and indeed the more minor injuries caused to other passengers, although it seems that there was little evidence about these. The level of alcohol in the appellant's blood was itself a serious aggravating factor, as was the fact that the appellant had deliberately ignored warnings by terrified passengers and must therefore have been well aware of the effect which his driving was having on them. As the cases make clear, for example **R v Robert Brown** [2018] EWCA Crim 1775, [2018] 4 WLR 152, the top of the sentencing range is not reserved for completely exceptional cases. If the nature of an offence is serious enough it may attract the maximum sentence or a sentence close to the maximum after trial even though it is possible to envisage even graver circumstances in which the offence could be committed.
15. Mr Watkins also points out in his written submissions that **Brown** reaffirmed the principle

that consecutive sentences should not be imposed for driving offences involving death or injury to more than one victim where the offences arise out of a single incident. However, the judge did not in fact impose consecutive sentences, nor did she take the overall sentence that she would have imposed after trial above the then applicable statutory maximum. Rather, she treated the injuries to Ms Ratcliffe as a serious aggravating feature for the principal offence. That was the correct approach.

16. The appellant had only limited mitigation, but the judge correctly took it into account. She referred to the fact that he had remained at the scene, had shown distress and genuine remorse, had increased in maturity since the sentence (an observation which shows that she was well aware of the delay which had occurred) and that the appellant had pleaded guilty at the earliest opportunity. It would not be appropriate to adjust the sentence which was imposed to take account of the change in the law as regards release dates. This court has held repeatedly that this is not a relevant factor for sentencing purposes.
17. It may be that a sentence of 13-and-a-half years after trial can be regarded as a severe sentence in this case having regard to what was then the statutory maximum, but this was a very grave offence of its kind and in our judgment that would have been a sentence which the judge would have been entitled to impose in all the circumstances of this case after a trial. She gave the appellant full credit for his plea. Accordingly, the appeal against sentence is dismissed.
18. We should say a word about the extension period. The effect of the change in the release provisions meaning that the appellant now has to serve two-thirds of the sentence imposed is that a longer extension period ought to have been imposed. However, as we are dismissing the appeal, there is no power in this court to increase the extension period and that will therefore remain 13 years and 2 months as imposed by the judge.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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