Neutral Citation Number: [2024] EWHC 1942 (KB)

Case No: KB-2022-BHM-000221

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil and Family Justice Centre
Priory Court
33 Bull Street
Birmingham
B4 6DS

Date: Monday, 3 June 2024

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

BIRMINGHAM CITY COUNCIL — **Claimant**

- and –

(1) MR RAAGHIB AFSAR — **Defendants**
(2) MR UMAR MAHMOOD

- -
- -

MR SANGHERA instructed by the Claimant's legal department for the **Claimant**

MR ROBINSON solicitor of McGrath & Co for the **Defendants**

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APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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HER HONOUR JUDGE EMMA KELLY:

1. The defendants, Mr Raaghib Afsar and Mr Umar Mahmood, appear before the court having admitted contempt by virtue of their actions on 19 May 2024. They each accept that their driving on that occasion amounted to a breach of paragraph 1 of a final injunction granted by Knowles J on 27 February 2024.

2. Both defendants have made written admissions at today's hearing following receipt of legal advice and in circumstances where they are represented at today's hearing by their solicitor. The basis of the admissions are acceptable to the claimant.

Background

3. The order of Knowles J is aimed at preventing street cruising occurring on the streets of Birmingham. The application followed concern by the claimant local authority that antisocial and often unlawful behaviour in the form of car cruising or street cruising was occurring within its administrative boundary.

4. The two defendants find themselves falling within a category of persons unknown defendant, specifically the tenth defendant who is defined in the following terms:

> "Persons unknown who participate or intend to participate in street-cruises in Birmingham as car drivers, motorcycle riders or passengers in motorcars or motorcycles."

5. Paragraph 1 of the injunction order prohibits that defendants from participating "in a street cruise within the Claimant's local government area (known as the City of Birmingham) the boundaries of which are delineated in red on a map attached to this Order at Schedule 1." The said map outlines the administrative area of Birmingham.

6. Paragraph 3 of the order states:

> "The terms 'street-cruise' and 'participating in a street cruise' have the meaning set out in Schedule 2 to this Order."

7. Paragraph 1 of Schedule 2 to the Order defines the terms "street cruise" as follows:

> "'Street cruise' means a congregation of the drivers of two or more vehicles (including motor cycles) on the public highway or at any place to which the public have access within the claimant's local government area (known as the City of Birmingham) as shown delineated in red on the map at Schedule 1, at which any person performs any of the activities set out in paragraph 2 below, so as, by such conduct, to cause any of the following:
>
> (i) Excessive noise;
> (ii) Danger to other road users, including pedestrians;
> (iii) Damage or the risk of damage to private property;
> (iv) Any nuisance to another person not participating in the street cruise."

8. Paragraph 2 of Schedule 2 lists a nine activities referred to in paragraph 1. They include, but are not limited to:

> "(i) driving or riding at excessive speed, or otherwise dangerously;
> (ii) driving or riding in convoy;
> (iii) racing against other motor-vehicles;
> (iv) performing stunts in or on motor-vehicles;
> (v) obstructing the highway or any private property…"

9. By paragraph 3 of Schedule 2, "participating in a street cruise" is defined in the following way:

> "A person participates in a street-cruise if he or she is
>
> (i) the driver or rider of, or passenger in or on, a motor vehicle at a street cruise and performs or encourages any person there present to perform any activity, to which paras. 1-2 above apply, or
>
> (ii) a spectator at a street cruise,
>
> and the term 'participating in a street-cruise' shall be interpreted accordingly."

10. By paragraph 4 of the injunction, a power of arrest was attached to paragraph 1 of the injunction in relation to any defendant who participates in a street cruise as a driver, rider or passenger. The power of arrest is not attached to the activities of spectators.

11. The order came into force at 4pm on 27 February 2024 and is to remain in force until 27 February 2027, with provision made for annual reviews of the order.

Service

12. The provisions as to requirements for alternative service against the persons unknown defendants are set out in paragraph 1 of Schedule 3 to the injunction. The claimant relies on the affidavit evidence of Michelle Lowbridge, the claimant's community safety manager, dated 4 April 2024 as to service. I have already addressed in part the question of service of the injunction in an oral judgment I gave earlier this morning. That judgment dealt with the claimant's unopposed application to dispense with part of paragraph 1(iv) of the alternative service requirements as provided for in Schedule 3. I will not repeat that detail of that judgment, suffice to say that no issue is taken by either defendant as to service of the injunction.

The contempt applications

13. Both defendants were arrested at the roadside shortly before midnight on 19 May 2024. The admissions each defendant makes are as follows. Each admits breaching paragraph 1 of the injunction as particularised in the schedule of breach save for certain matters that are not accepted.

14. Mr Afsar was driving a white Audi R8 vehicle and Mr Mahmood a grey Audi RS6 motor vehicle. Mr Afsar pulled out of Devon Street on to Heartlands Parkway dual carriageway followed by Mr Mahmood. After an initial period of driving at usual road

speeds, Mr Afsar accelerated heavily overtaking Mr Mahmood. The particulars of breach alleged that both men reached speeds of 100 miles per hour, very significantly in excess of the 40 miles per hour speed limit. Both Mr Afsar and Mr Mahmood only admit to reaching speeds of 80 miles per hour. The claimant accepts the defendants' case as to their speed.

15. Both defendants accept that they accelerated heavily once again when the next set of traffic lights turned to green leading on to Fort Parkway. Mr Afsar does not accept that he flashed his car headlights at a motorcyclist encouraging the motorcycle to race. Again, the claimant does not seek to challenge Mr Afsar's factual account.

16. The defendants accept accelerating hard again along dual carriageway known as Fort Parkway. The claimant's pleaded case alleged speeds of 90 miles per hour in circumstances where the speed limit was 40 miles per hour. Both defendants accept the stated speed limit is correct but only admit to reaching speeds of 70 miles per hour along this stretch. Again the claimant does not take issue with the lower speed. The defendants do not take issue with the allegation that other road users were present and that the police attendance was further to complaints from members of the public.

17. I have also had the benefit of viewing the video footage taken from the unmarked police car that was following the defendants, as reading the two police offers' witness statements. The court proceeds to sentence on the basis of the admissions.

18. The defendants accept that they were engaged in racing each other at speed on a public highway. That activity was a nuisance and created an obvious danger to other road users and risk of damage to private property. The hour and the geographical location of the activity is such that it falls within the definition of a street-cruise as prohibited by the injunction. As contempt proceedings, the claimant must prove any allegation of contempt to the criminal standard of proof. In light of the admissions and having considered the video and written evidence, both defendants' actions amount to contempt.

Approach to sentencing

19. This court has already sentenced a number of other drivers for breach of what was an interim version of the injunction and for breach of the final injunction. I adopt the same sentencing approach. The objectives of this sentencing exercise are, firstly, to ensure future compliance with the order, secondly, punishment and thirdly, rehabilitation.

20. Mr Robinson submits that the passing of suspended sentences in previous cases has worked to achieve primary objective, namely future compliance with the order, as no previous driver has yet found themselves back before the court.

21. I adopt, as I have in similar cases, the guidance in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 by analogy. That approach was endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355.

22. Each defendant falls to be sentenced separately, although there are a number of similar considerations in each of their cases.

23. As to culpability, both advocates contend, and I agree, that these cases fall within culpability category B, being a deliberate breach falling between category A and C. Category A being reserved for very serious breaches or persistent serious breaches, and the lowest category C.

24. As to the category of harm, the claimant contends it is 'at least' a category 2 harm case. The defendants contend it is category 2 harm. When assessing the level of harm, the court has to take into account the harm that was actually caused, but also that which was intended or at risk of being caused. Self-evidently, driving at very high speeds of 70-80mph and racing against another on a public highway in an urban area creates a very obvious risk of serious harm, or indeed worse, to those travelling in the vehicles, to other road users, to spectators, pedestrians and indeed anyone else or any other thing in the vicinity. There have been previous instances of street-cruising within the wider geographical area of the West Midlands that have resulted in fatalities. I assess the harm as falling within category 2, albeit at the top end of that bracket.

25. The starting point for a culpability B, category 2 harm case is a sentence of one month's imprisonment with a range of adjourned consideration to three months' imprisonment.

26. The court has to take into account any aggravating or mitigating circumstances. There were no aggravating features of either of these two defendants' cases.

27. There are a number of mitigating features. Mr Afsar is now 29 years old, Mr Mahmood 25 years old. They are both, quite frankly, of an age where they should have known better than to engage in such stupidity but I nonetheless take some account of their relative youth. Each defendant is of good character. Each is before the civil court for what is their breach of the injunction. Through their solicitor, each has apologised to the court and indicated an intention to comply with the injunction in the future.

28. Both defendants are in gainful employment. The court has told that Mr Afsar is single and lives with his parents and siblings. He works in a family takeaway business with a net monthly income of some £1,200 per month. After his outgoings, the court is told that has about £200 a month left. On the night in question, he was driving an Audi R8, a very powerful and very expensive vehicle; a vehicle well beyond the financial means for someone on such a modest income. Mr Robinson submitted that Mr Afsar owns a BMW 3 series car but had borrowed the Audi for the evening from a friend.

29. Mr Mahmood is also in gainful employment. He also lives with a parent and siblings. He works, somewhat ironically given the reason why he is before the court today, as a delivery driver. His net monthly income is said to be £1,500 per month with outgoings of approximately £1,300. Mr Mahmood was also driving a very powerful and expensive vehicle that was not his own rather he had hired the RS6 for the week

30. I take into account that both of these young men are normally law-abiding members of the public in gainful employment. Notwithstanding the various matters of mitigation, neither deferred consideration or a fine would be a sufficient penalty for

the breaches of this injunction. Each breach is so serious that only a custodial penalty will suffice.

31. I treat each defendant the same. The facts of their admissions are identical and their personal mitigation is indistinguishable in respect of material matters. The appropriate sentences in each of their cases, before I take into account credit for their early admissions, are ones of 42 days' imprisonment. Each defendant has made their admission at the first opportunity after being served with the evidence and having had the opportunity to obtain legal advice. Each is entitled to maximum credit of one-third, reducing each sentence to 28 days.

32. I suspend each sentence for a period of 12 months on condition of compliance with the terms of the injunction or any subsequent version of the injunction, should its terms be amended within the period of suspension. As the Court of Appeal observed in *Lovett*, suspension is usually the first way of attempting to secure compliance with the underlying order. The defendants' previous good character and expressions of intention to comply with the order going forward means that the court is confident that neither of these two gentlemen will be back before the court. The defendant should however be clear that, should they find themselves in breach of the injunction in future, they put themselves in a perilous position as the court would ordinarily be activating any live suspended sentence in addition to sentencing for any further breach.

33. The claimant applies for its costs. Those costs are limited to £693 per defendant being the court application issue fee and a 50 per cent contribution to counsel's attendance fee today. The application for costs is not opposed. That is a sensible concession, given the general rule under CPR 44.2(2) is that the unsuccessful party will be ordered to pay the costs of the successful party. There is no reason to depart from the general rule in this case. The costs sought at £693 per defendant are entirely proportionate and indeed lower than one normally sees in such cases as no solicitor time costs have been claimed. Each defendant shall pay the claimant's costs, summarily assessed in the sum of £693. Whilst it is tempting to order payment by way of a lump sum given the extravagant cars that each defendant was driving on that evening, I accept that cars are not a true reflection of the defendants' means. The costs will be paid by instalments of £200 per month. First payments to be made by 3 July 2024, and thereafter by the 3rd of each month until the balance has been discharged in full.

34. Each defendant has a right to appeal the suspended orders of committal. Any appeal lies to the Court of Appeal and must be filed within 21 days of today. I direct that a transcript of this judgment be obtained on an expedited basis at public expense and a copy of the judgment be published on the judiciary website in due course.

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