



**THE COURT OF APPEAL**

**[44/21]**

The President

McCarthy J.

Kennedy J.

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**AND**

**KEITH LENNON**

**APPELLANT**

**JUDGMENT of the Court delivered on the 1st day of April 2022 by Birmingham P.**

1. This is an appeal against severity of sentence. The sentences under appeal were imposed on 12th February 2021 at Dundalk Circuit Criminal Court. On that occasion, three concurrent sentences, each of ten years with the final year suspended, were imposed in respect of three counts of manslaughter contrary to common law.

**Background**

2. The sentence hearing related to events that occurred in the early hours of the morning of 29th February 2020 at Ravensdale, Dundalk, County Louth. On that occasion, there was a fatal road traffic accident on the northbound carriageway of the M1 motorway, close to Junction 20. Three people lost their lives in the collision, those being Mrs. Mary Faxton, Mr. Kevin Faxton, and Mr. Bryan Magill. The two vehicles involved were a one-litre Peugeot 108, driven by the late Mr. Faxton, in which his mother, the late Mrs. Faxton, was a passenger. The second vehicle was a red three-litre Audi A4, the driver of which was the appellant. The appellant had three passengers in the vehicle at the time of the accident and one of those passengers, located in the rear, was Mr. Magill.
3. On the previous night, 28th February 2020, the appellant drove to Dundalk from his home in Northern Ireland in order to meet with a friend of his, Mr. Graham Kearns. Earlier in

the evening, the accused had been driving a Volkswagen Passat, but at some point, he changed to the red Audi A4. In the course of the sentence hearing, there was evidence that Mr. Lennon was the owner of a vehicle, the Passat, which he used to get to and from work, and which was properly taxed and insured. However, just over a month prior to the fatal collision, he had obtained a loan of €6,000 from a credit union, and with this loan purchased the Audi A4, a powerful three-litre vehicle. The accused's mother was called as a witness during the course of the sentence hearing. Her evidence was that she and other members of her family were completely unaware of the fact of the purchase of the Audi, and had anything been known about it, it would never have been allowed leave the family home without being insured. The vehicle was in fact uninsured at the time of the accident. It may also be noted that an examination of the Audi subsequent to the accident established that three of the four tyres were defective, but this was referred to only in passing as this was not a contributing factor in the accident.

4. There was some CCTV footage recording the movements of the appellant and others in and about the town of Dundalk on the night in question. The footage showed that at about 1.15am on 29th February, the appellant and Mr. Kearns arrived at Lumpers, a licensed premises in Dundalk. CCTV footage would suggest he drank one pint of lager in that premises. It appears it was in that premises that the appellant and Mr. Kearns met with a Mr. Sean Kiernan, and Mr. Magill. A victim impact report presented to the Court by Mr. Magill's mother indicates that Mr. Magill and Mr. Lennon were not known to each other prior to this occasion, and his mother was unaware how Mr. Magill came to be in the car.
5. In the course of the sentence hearing, there was reference to an incident, which allegedly took place outside a takeaway pizza restaurant in Dundalk, in the course of which one of the occupants of the car got out and started to punch another male who was walking on the footpath. According to the appellant, Mr. Kearns got out to intervene and pulled the individual who had been involved back into the car. The appellant reported that in the aftermath of this incident, he experienced an adrenaline rush and said that he drove off in a state of heightened arousal. He also referred to the fact that he was uncomfortable and wanted to leave the situation. CCTV footage shows the red Audi, at about 1.59am, driving from Dundalk out along the Newry Road. It was being driven at some speed as it passed an Applegreen Service Station. It was estimated that at that point, it was being driven at speeds of 80-90 miles per hour, and as it progressed onto the motorway, the speed increased to between 120-130 miles per hour. At the time of the accident, which involved the Audi being driven into the rear of the Peugeot, the vehicle was travelling at 140 miles per hour.
6. Part of the evidence at the sentence hearing was from Snapchat videos recorded by the accused while driving the vehicle. Two video recordings were taken, one of ten seconds and one of four seconds, both focused on the speedometer. These were then forwarded by the appellant to friends of his, one of whom being the front-seat passenger in the vehicle, Mr. Kiernan. In conversation with the probation officer, the accused referred to the fact that he had been pushing his new car to see what it could do, i.e. to see at what

speed it could be driven. A report from Met Eireann indicated that, on that night, it had been raining, in that there was patchy rain, with visibility being moderate. The vehicle into which the Audi collided, the Peugeot 108, was being driven in the same direction on the northbound carriageway by Mr. Faxton, aged 58 years, with his 89-year-old mother as his passenger. His mother experienced certain medical difficulties, and associated problems with sleeping. As a response to this, family members would, from time to time, bring her for an evening or night-time drive, as was the case on this occasion.

7. In relation to the manner of driving, there was also evidence before the Court, by way of a statement from a Mr. Michael Farrell, another motorist who was also driving northwards on the morning in question. The car he was driving was passed by the red Audi at high speed, and he described how it nearly clipped his car. It was he who was first on the accident scene. In the aftermath of the accident, the accused did not remain the scene, but made his way home. He explained to a psychologist, who prepared a report for the purposes of the court case, that the following morning he heard on the news that there had been a road traffic accident in which three people had been killed. At that point, he said that he realised that this was the accident in which he had been involved. He then contacted his solicitor, and the Gardaí, and informed them that he had been driving the car.
8. A victim impact report was put before the Court, prepared by Ms. Yvonne Campbell, a daughter of the deceased Mrs. Faxton, and sister of the late Mr. Faxton. The report was prepared on behalf of her father, her brothers and sisters, and extended family, and it graphically describes the impact of this tragedy on the family. Also before the Court was a report prepared by Ms. Yvonne Magee, mother of the late Mr. Magill. Again, the extent of the loss experienced by Mr. Magill's mother, his siblings, and wider family is very apparent.

### **Personal Circumstances of the Appellant**

9. In terms of the appellant's background and personal circumstances, he was born on 4th March 1999, and was just short of his 21st birthday at the time of the incident. In the course of the sentence hearing, his mother gave evidence. The Court heard that Mr. Lennon had no previous convictions, and it was the case that, going back to primary school days, there had only been positive reports about him. The indications were that he had been more practical than academic, and he left school aged sixteen, but he had a very good work record involving working in the fishing industry and the construction sector. There was also reference to his being an apprentice mechanic. A number of positive references and testimonials were put before the Court.

### **Discussion and Decision**

10. The trial judge's approach was to identify a headline sentence of fourteen years. On behalf of the appellant, she is criticised for doing so. It is argued on behalf of the appellant that the headline sentence nominated was excessive, particularly if regard is had to the fact that the judge indicated that she saw this as a mid-range offence. It is contended that a sentence of fourteen years is not appropriate for a mid-range offence. Reference was made to the decision of the Supreme Court in DPP v. Mahon [2019] IESC 24. However, in the course of the appeal hearing, it was acknowledged that that decision is of somewhat limited assistance, and is not directly on point when dealing with gross negligence manslaughter, or, in particular, motor manslaughter.
11. We begin our consideration of this case by observing that the occasions when courts are called to sentence for manslaughter where there have been multiple fatalities are rare. By any standard, the offending at issue here has to be regarded as extremely serious. A powerful car was driven for a prolonged period at very high speed, reaching no less than 140 miles per hour immediately prior to the collision. What sets the case apart was the actions of the driver in producing two video recordings, while driving at speed, and sharing these recordings with friends. It is difficult to find the language to describe just how reckless that conduct was. If one considers situations where high-speed driving is permitted, for example in motorsport, intense and total concentration is called for.
12. The aggravating factors here were obvious: the nature of the driving; the fact that the appellant was driving at extraordinary speed; the videoing and sharing of the videos; the fact that the vehicle was uninsured; and the actions of the driver in leaving the scene. It has to be acknowledged that there were factors present by way of mitigation. There was the early plea and the expressions of remorse, the absence of any previous convictions, the strong work record, and the fact that the appellant led a positive lifestyle.
13. As we have often commented, before we will intervene in relation to sentence, something in the nature of an error in principle must be identified. The sentence being appealed or reviewed must be one that falls outside the available range. The fact that this Court, had it been called on to sentence at first instance, or indeed, individual members of the Court, if called upon, might have been minded to impose a somewhat different sentence, does not provide a basis for intervention. Clearly, this was a case where a substantial custodial sentence was inevitable, and that was so notwithstanding significant factors present by way of mitigation.
14. We do not believe that the judge is to be criticised for identifying a headline sentence of fourteen years. She categorised the offending as mid-range, but we think she might well have taken the view that the offence fell into the upper range. It was, after all, a case involving a very high degree of recklessness indeed, and the harm done, involving the loss of three lives, was very grave indeed. Either way, we do not see a headline or pre-mitigation sentence of fourteen years as impermissible in the circumstances. Having identified a headline sentence of fourteen years, the judge then discounted that to ten years and suspended one year of the sentence. We do not think that the sentence

ultimately imposed fell outside the available range, though we recognise that this was indeed a substantial sentence imposed on a young man without previous convictions.

15. In the circumstances, we are obliged to dismiss the appeal.