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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 28 February 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE KING

HIS HONOUR JUDGE MARTIN EDMUNDS QC
(Sitting as a Judge of the CACD)

R E G I N A
v
CONOR THOMAS DOBSON

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Mr M Kimsey appeared on behalf of the **Appellant**
Mr D Sullivan appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS: This is an appeal, brought by leave of single judge, against sentence. The appellant is Conor Dobson, now aged 24. On 13 April 2018, in the Crown Court at Lewes, the appellant pleaded guilty to a count of manslaughter and to a count of burglary. On 6 August 2018 he was sentenced in the following way. On the count of manslaughter, he was sentenced to an extended sentence of 18 years, comprising a custodial term of 15 years and an extension period of 3 years. On the count of burglary, he was sentenced to a term of 45 months' imprisonment to run concurrently. The total sentence therefore was an extended sentence of 18 years, comprising a custodial term of 15 years and with an extended licence period of 3 years. In addition, further orders were made. He was ordered to take an extended driving test and also disqualified from driving, the judge indicating a broad intention, of posing a discretionary disqualification period of 3 years to run after he had served the relevant part of his sentence.

2. There was a co-accused, a man called McFadyen, who had pleaded guilty to counts of burglary, handling stolen goods and dangerous driving. He was sentenced to a term of detention in a young offender institution. His application for leave to appeal against sentence was refused by the single judge and has not been renewed.

3. The background is this. The co-accused, McFadyen, had pleaded guilty to stealing and handling a car, a Mercedes car which had been stolen in London and which had come to be called the "London Mercedes". It had been stolen in the course of a burglary in London which had occurred at around the end of May or early June 2017. The number plates of the London Mercedes had been changed after the burglary and false number

plates had been fitted.

4. On 10 November 2017 a property, 43 Goring Way near Goring, was targeted on the basis that a Mercedes C63 car, along with another valuable car, was parked at those particular premises. It seems plain that the appellant and the co-accused had come down from London in the London Mercedes with a view to finding suitable premises for them to burgle and steal keys of valuable cars. At all events there was an entry into that property in Goring and there was an untidy search. There was damage to the front door and various other items were stolen during the course of the burglary, including keys both to the Mercedes C63 and another Mercedes parked outside, along with cash and other items. So far as the Mercedes C63 vehicle was concerned that was valued at some £30,000.

5. The police had apparently received some form of alert. It was noted that the London Mercedes, together with the stolen C63 Mercedes, were at a particular petrol station. The C63 Mercedes was by this stage being driven by the appellant and the London Mercedes was being driven by the co-accused, McFadyen. The London Mercedes in fact had arrived at the petrol station a little after the C63 Mercedes. The C63 Mercedes was refuelled, there was then a brief conversation between the appellant and the co-accused and then payment was made for the petrol. At that time the police drove into the service area and the two Mercedes cars then drove out of the service station. Both vehicles turned right going in the direction of Horsham. Shortly thereafter the police pursuit commenced. What followed was caught on a video in the police car which this court has viewed. There was a high speed chase. The London Mercedes was immediately in front of the police pursuing car and the C63 Mercedes, driven by this appellant, was in front again of the London Mercedes. There was reckless overtaking of

vehicles by both Mercedes cars with a view to shaking off the police chase.

6. There came a stage where both cars, having driven along the A272 road turned right into a narrow one track country lane. Both cars then sought to turn right at the bottom of the lane, heading in the direction of the A24 car. However, the co-accused, McFadyen, driving the London Mercedes, lost control of the car as it came out of the junction of the country lane and crashed into a hedge. He was in due course apprehended by officers whilst trying to run away from the scene. He gave some false and garbled explanations as to what his involvement in driving might have been.

7. The skill of the pursuing police officers is to be noted and commended. However, the C63 Mercedes, driven by the appellant, continued to drive away. Ultimately it did a loop back round to the A24 and carried on travelling in the northerly direction. What happened was that it then collided with another car on the northbound carriageway of the A24 immediately north of the Broad Bridge Heath interception to the west of Horsham. The collision involved the Mercedes driven by the appellant, a red Ford Fiesta and also a black Peugeot. All those cars had been travelling in the northerly direction. The C63 Mercedes was travelling in lane 2 of the main carriageway. It collided with the front nearside corner of the rear offside corner of the Ford Fiesta, which had itself had just completed a lane manoeuvre from lane 1 into lane 2. Following that collision the C63 Mercedes rotated along the central reservation for a considerable number of metres before coming to rest partially upon the central reservation. The air bag was activated. It would appear that the appellant was effectively unscathed because he ran away. In due course, he managed to persuade a motorist who was entirely ignorant motorist of what happened to give him a lift and he eventually returned to London.

8. As for the Ford Fiesta, that rotated several times following the impact before striking the Peugeot car which was close to it. The Ford Fiesta came to rest at the side of the road. Tragically, as a result of the collision, the driver of the Ford Fiesta, a Ms Rebecca Nevins, who was aged 70, sustained fatal injuries. Her front seat passenger, Ms Goacher, sustained minor injuries albeit requiring hospital treatment. The driver of the Peugeot was not injured.

9. At the time of the collision it was daylight and the weather was fine and dry. The entry into the road showed a 60 mile per hour limit which was clearly signed. It was a feature of this particular case that expert forensic reconstruction concluded that the C63 Mercedes had been approaching the scene at an average speed of between 137 and 147 miles per hour. The expert report was to the effect that the Ford Fiesta had commenced to move into lane 2 at about 57 miles per hour (that is to say, within the speed limit), the Mercedes at the time it took place would have been some 134 to 151 metres away from the rear of the Ford Fiesta when it commenced its lane change. The impact itself was of a glancing nature.

10. As we have said, after getting out of the car and running away the appellant succeeded in making his way back to London. However, he was linked to the stolen C63 Mercedes by virtue of DNA which had been deposited on the driver's air bag which had deployed following the collision. He was ultimately arrested two or three days later at an address in London.

11. There were moving victim personal statements before the Crown Court on which this court does not need to dwell. The impact on the family of Ms Nevins will be obvious to all concerned.

12. Unfortunately this appellant has a very bad antecedent history. He has been before the courts on numerous occasions. Included in his antecedent history are driving offences and offences relating to drugs and dishonesty. In particular, he has a number of convictions for offences of burglary of a dwelling house over the years and he has received substantial custodial sentences in the past.

13. A pre-sentence report was obtained. That was by no means favourable to this appellant.

14. The facts were there fully recited. It also noted the appellant saying to the probation officer who wrote the report that he had failed to stop because he thought "he had a good chance of getting away". He described his collision with the Ford Fiesta car with Ms Nevins as "just an accident that could have happened to anyone". The writer of the report referred to underpinning factors in the appellant's criminality, included his anti-social life-style and attitudes. There was also evidence of thrill seeking. It is right to record that the probation officer concluded that the appellant showed some empathy for Ms Nevins and her family which the probation officer thought to be genuine; albeit that the appellant was still continuing to say that he had been "unlucky".

15. The probation officer reviewed the antecedent history of this particular appellant and concluded that he had entrenched attitudes of criminality. It was noted that there had been stages in his life where his personal circumstances had afforded him a motivation to desist offending. However, notwithstanding these potentially stabilising factors he had carried on committing further serious offences.

16. The writer of the report then said this:

    i. "Whilst the index offence represents his first conviction for Manslaughter, the behaviour linked to this offence is entrenched.

> Moreover, the current offence of Burglary conforms to an established pattern of like offending. Mr Dobson has continued to prolifically offend despite numerous attempts to reduce the risk he poses, and the seriousness of his offending behaviour has escalated despite seemingly stabilising factors in his life. The information available to me suggests that there is an imminent risk of serious harm upon release and a significant risk of like re-offending."

17. The writer of the report indicated the appellant's sense of entitlement, as it were, to have a good life style and then said this:

    i. "Mr Dobson's attitudes appear to be wholly antisocial and are considered to be a critical risk factor ... Mr Dobson has repeatedly disregarded societal norms and the impact of his behaviour. Moreover Mr Dobson has a history of offending whilst subject to Court Orders and has, at times, exhibited a complete disregard for the safety of others for personal gain..."

18. The report concluded that the appellant was assessed as "dangerous" and that the risk of serious harm to members of the public was considered to be imminent and therefore high. The proposal was that an extended determinate sentence should indeed be considered.

19. When the judge came to pass sentence he reviewed matters carefully. He opened his sentencing remarks by saying this:

    i. "As far as you are concerned, Conor Dobson, may I say at the outset that no sentence that I can impose upon you can possibly equate to the value of Rebecca Nevins' life. It is certainly not intended to and simply couldn't because nothing can put right the dreadful consequences of your actions last November."

20. Those were entirely apposite remarks.

21. The judge then set out the facts and noted the speed at which the appellant had been

travelling and recorded him as having in effect used a public road as "a race track". The judge went on to express his agreement with the reasoning and conclusion of the probation officer in the pre-sentence report and took the view that an extended sentence was necessary for the protection of the public.

22. Having so indicated the judge said this:

    i. "Turning back for a moment to the burglary, because of your past history of committing residential burglaries, the minimum sentence for that offence would have been of three years' imprisonment and the sentence on that matter should as a matter of sentencing practice be imposed consecutively but I am imposing a concurrent sentence to the sentence on count 1 but the sentence of count 1 will be uplifted to reflect the fact that they are concurrent and that I am imposing an extended sentence."

23. The judge then indicated that the appropriate reduction for the plea was 25%. He concluded that the total sentence to be imposed was one of 15 years' imprisonment with the 3 year extended licensed period, as we have said, with a concurrent sentence on the burglary matter. The judge did not specifically indicate what figure he took for the manslaughter count, nor did he indicate what was the total starting point for the overall offending which he took; but it is clear that if he gave, as he did, 25% credit for the plea, the starting point of the judge would have been 20 years' imprisonment for the two counts taken together. It may be noted that there was not available to the judge at the time any sentencing guideline for manslaughter of this kind. The guideline has only come into effect since that time.

24. On behalf of the appellant Mr Kimsey advances three grounds of appeal. First, he submits that the custodial sentence of 15 years' imprisonment (representing a starting

point of 20 years before credit for plea) was much too long and was excessive, even allowing, as Mr Kimsey rightly did allow, for the appalling gravity of this offending. Mr Kimsey goes on to say that whilst count 1 was charged as a count of manslaughter and whilst this appellant has pleaded to that count of manslaughter, nevertheless this was a case where it was appropriate to take into account the Definitive Guideline issued by the Sentencing Guidelines Council relating to Causing Death by Dangerous Driving (see for example observations of a constitution of this court in the case of R v Dobby [2017] 2 Cr App R(S) 27). It is, of course, acknowledged that, whereas the maximum available sentence for causing death by dangerous driving is 14 years' imprisonment, in terms of manslaughter the maximum available sentence is one of life imprisonment. However, it was the submission of Mr Kimsey that the circumstances of this case are such that close regard should be had to the indications of level of sentencing had this been charged as causing death by dangerous driving.

25. Mr Kimsey goes on to stress that the Crown had, at all events latterly, accepted that this was to be regarded as a case of gross negligence manslaughter and was not to be treated as a case of "unlawful act" manslaughter. For example there is no suggestion here that this car had been deliberately driven by the appellant at someone as though it was a weapon.

26. In his written arguments Mrs Kimsey also points to a number of authorities. For example, the facts in the case of R v Brown [2018] EWCA Crim 1775 were arguably worse than in the present case and indeed had involved more than one fatality. But there the matter had been charged as causing death by dangerous driving.

27. Mr Kimsey then draws attention to the fact that here there was just the one fatality. That

is true and that is obviously highly relevant to the sentencing outcome. It can on the other hand, also be pointed out that it really was by sheer good fortune that there was not more than one fatality or very serious injury involved. He is also entitled to point out that no drink or drugs were involved in this case. That also is true; but it has to be borne in mind that this driving occurred whilst the appellant was trying to escape the police after committing a burglary and above all, it has to be borne in mind that this appellant was driving at such grossly excessive speeds on a busy road.

28. Mr Kimsey's second point is to challenge the judge's finding of dangerousness. He did so without (realistically) pressing that challenge too hard. What is said is that whilst this appellant does have a very bad record, that record does not relate to significant violence. It is further suggested that he is relatively young and any risk could be managed by the inevitably lengthy custodial term he would receive and by the appropriate period of driving disqualification. It is stressed that extended sentences must look to the future and not be used as a form of punishment for what has occurred in the past.

29. As to this second point relating to dangerousness, we would say straightaway that we are not persuaded. Whilst it may be that this appellant does not have any significant record for past violence, the present case shows that he is prepared to risk the lives of the public as and when it suits him. In particular, the pre-sentence report had illustrated his entrenched anti-social and criminal values and his complete disregard for societal norms. There is also a high risk of re-offending assessed by the writer of the report and indeed there has been an escalation in his offending.

30. Our view is that the judge was entitled to accept the observations and conclusions of the probation officer and was entitled, as a matter of his discretion and evaluation, to impose

an extended sentence as he did.

31. We revert however to Mr Kimsey's first ground, which is the challenge as to the length of the custodial term. We think that there is considerable force in what Mr Kimsey has submitted. Let there be no misunderstanding: this was terrible offending with tragic consequences. The speeds at which the appellant drove were almost insanely high and he did so on a busy public road. Nevertheless, in the circumstances and bearing in mind that this was treated as gross negligence manslaughter, we do think that the starting point the judge must have selected, had there been a trial, simply was too long in all the circumstances of this case. Had this been charged and tried as a case of causing death by dangerous driving, as it might well have been, we would not have expected the sentence to be the maximum of 14 years: we would have expected the sentence to be somewhat below that. It would be wrong to increase the sentence well above the 14-year maximum, which Parliament has seen fit to allow for causing death by dangerous driving, simply because of the decision to charge as manslaughter. In saying that, we make clear that we do not propose that the guideline for causing death by dangerous driving operates as some kind of straitjacket in motor manslaughter cases. But in the circumstances of a case like this, those guidelines at least should properly be borne in mind.

32. There is no doubt that there then did have to be a significant uplift on the sentence on count 1, on the footing that concurrent sentences were being imposed as the judge elected to do. That uplift had to be significant just because the burglary itself was of a serious kind. This appellant has a very bad record for burglaries. He was in the company of someone else in what was a planned venture and indeed this was a three-strikes case involving, in the ordinary way, a minimum term of 3 years' imprisonment.

33. We conclude, having regard to considerations of totality and adopting the concurrent sentencing approach adopted by the judge, that the total starting point for all this offending, before credit for plea, should have been one of 16 years' imprisonment. With all respect to the judge, we think that his starting point of 20 years' imprisonment in total for this offending was significantly too long.

34. We then turn to Mr Kimsey's third ground of challenge, which is as to the credit for plea afforded by the judge. This was, as we have said, 25%. Mr Kimsey took us through the procedural history. He said a number of points had to be explored, including the obtaining of the expert evidence as to speed and also clarification as to what the Crown's position was with regard to manslaughter. It is sufficient to say, however, that we think that the judge was perfectly entitled to accord credit of 25% for the plea entered at the stage it was and in the circumstances that it was. We do not think that there was any error of principle in the judge's according credit of 25% given the circumstances of this case.

35. In the result therefore, we will quash the extended sentence of 18 years' imprisonment on count 1. We will substitute an extended sentence of 15 years' imprisonment on count 1, comprising a 12 year custodial term and an extension period of 3 years. The sentence on count 3 as imposed by the judge will stand and will continue to run concurrently. We will hear counsel as to any consequential adjustment needed to the driving disqualification period having regard to Needham considerations, we indicating that the discretionary period selected by the judge was entirely appropriate.

36. LORD JUSTICE DAVIS: What is the calculation, because strictly, the time spent on remand should not come into the equation, should it?

37. MR SULLIVAN: No, I do not believe it does. So it is the two-thirds point.

38. LORD JUSTICE DAVIS: Eight years plus 3.

39. MR SULLIVAN: Yes, I think that is right.

40. LORD JUSTICE DAVIS: Would that be your view Mr Kimsey?

41. MR KIMSEY: That is my view, yes.

42. LORD JUSTICE DAVIS: Although that might be a slight increase in the period selected by the judge, because he adopted the wrong methodology, it is not an increase in the overall sentence because we have reduced the custodial sentence.

43. MR KIMSEY: I have nothing to add.

44. LORD JUSTICE DAVIS: I think your client fairly acknowledges the need for him to be disqualified.

45. Very well, the driving disqualification period will be a discretionary period of 3 years to run following on from the 8 years release date. Are there any other points?

46. MR SULLIVAN: No. Thank you.

47. LORD JUSTICE DAVIS: We thought both of you presented your arguments very well.

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk