Neutral Citation Number: [2024] EWCA Crim 744

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2024 01490 A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 18 June 2024

Before:

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE COCKERILL

HIS HONOUR JUDGE JOHN LODGE

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
v
IBRAHEEM ANWAR

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR B LLOYD appeared on behalf of the Solicitor General
MR T FORTE appeared on behalf of the Respondent Offender

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

1. Ibraheem Anwar is now aged 23. On 21 January 2024, in the Crown Court at Manchester, he was convicted by a jury of causing grievous bodily harm with intent. He was acquitted of the offence of attempted murder. At an earlier stage of the proceedings he had pleaded guilty to dangerous driving.

2. On 25 March 2024 he was sentenced to 30 months' imprisonment for the offence of causing grievous bodily harm with intent. A concurrent sentence of 18 months' imprisonment was imposed for the offence of dangerous driving. He was disqualified from driving for 39 months. His Majesty's Solicitor General now applies to refer the sentence imposed for causing grievous bodily harm with intent as unduly lenient, pursuant to s.36 Criminal Justice Act 1988.

3. The immediate circumstances of the offending were captured on clear CCTV footage. We have had the opportunity to watch and re-watch that footage.

4. On 13 July 2023, at about 7.45 pm, when it was still daylight, a 14-year-old, whom we shall call A., was running along a road called Heald Place in Rusholme in Manchester. As he ran along the pavement, an Audi car driven by the Offender approached from the opposite direction. A. was on the nearside pavement from the point of view of the Offender. However, there was a bend in the road that meant that A. probably was not in view of the Offender until the car was very close to A. When A. was in the Offender's view, the Audi moved to the nearside. It slowed down almost, if not completely, to a standstill. That apparently was to allow someone to get out of the car. A rear passenger got out of the offside. At the same time A., still running, moved out into the road. He appeared to stumble. Because he was still running, he fell forwards. As A. fell forwards, the Audi moved away. The Offender drove the car so as to turn it on to the offside of the road. That meant it drove towards A. As A. went to the road surface, the Offender drove the Audi over him. Although the speed of the car cannot be assessed with accuracy, from the CCTV footage it does not appear that it was travelling at any significant speed or accelerating

quickly. The Audi stopped with A. under the car. The rear passenger had been standing in the road a little way behind the car. When the Audi stopped, he ran up to and then passed the car. He may have said something to the Offender as he was by the car. From the CCTV footage it is impossible to be certain. The Offender after a second or two drove on. The rear wheels of his car went over A., who was still lying on the road. The Offender drove to the end of Heald Place. He turned right on to the main road and left the scene. A minute or two later, the rear passenger returned on foot. He appeared to pick something up from the road not far from where A. was lying and by now being tended to by passersby.

5. Before A. had run on to Heald Place he had been captured on CCTV running on the main road with another male. A few seconds later he was captured stopping by a white van parked on the main road. He had remained there for about a minute. He appeared to be hiding from someone or something. He seemed to be looking around the van on occasion to see if someone or something was in view. Beyond that, there is no direct evidence from any CCTV footage as to what had happened in the lead up to the events which led to A. being injured.
6. The Offender was traced via the car, which was registered to him. The police went to his home later on the day during the evening of 13 July. They spoke to the Offender's mother. She telephoned the Offender to tell him the police wanted to speak to him. The Offender went to the police station the next day, where he was arrested on suspicion of attempted murder. His immediate response was, **"**I just panicked and that, whilst in front of the car, I dunno, I just panicked**".**
7. When interviewed, the Offender said that two boys had come over to him when he was sitting in his parked car. There had been an altercation. In his account to the probation officer who prepared the pre-sentence report, he said that one of the boys had stolen a mobile telephone from someone who was in the car with him. That was the evidence he gave to the jury. He went on in his police interview to say this:

> "I'm driving a bit fast cos I want to get out of the area, and as I'm driving now one of them is on the left with his friend at that time. I seen him, but I want to get out of the area. I don't want nothing to do with them. But the one who I hit has ran across the road, but it's like my foot's on the brake. I'm looking at this guy ... As I seen him last second, I put my foot on the accelerator now to go straight to get off and go home. I've had a holiday the same day. I wanted to go home and pack and he's just gone underneath my car. But as I've hit him, I've noticed I've hit him and I put my foot on the brakes, and then I just panicked, I panicked, went into panic mode'."

In the course of the hearing before us today we were told that in his evidence at trial he had told the jury that when he was driving through Rusholme he was looking for A., who had taken the telephone from one of his friends.

8. A. was taken to Manchester Children's Hospital. He had suffered damage to both lungs, a laceration to the spleen and an undisplaced fracture of the pelvis on the right side. He was in the Intensive Care Unit for 24 hours because of the severity of the lung injuries. He was then detained in hospital for a further 12 days before being discharged.

9. There was no evidence before the jury or available to the judge as to any longer-term issues. A pathologist not involved in A.'s treatment recorded as follows:

> "... [A] was 14-years-old when he was hit by a car causing him to sustain multiple traumatic injuries. The pelvic fractures indicate that he was subject to high energy trauma, but it is not possible by reference to his injuries to estimate the speed at which the vehicle was travelling when the collision occurred. He sustained relatively severe and extensive injuries to both lungs … requiring admission to the paediatric intensive care unit for treatment and monitoring. He sustained a number of external blunt force injuries and received treatment from the plastic surgeons for an abrasion to his left hip, which developed an infection and required a course of antibiotics. In my opinion, [A.'s] recovery was almost certainly aided by the fact that he was an otherwise healthy adolescent with no significant pre-existing medical conditions; were this not the case, the traumatic injuries would have posed a greater risk to his morbidity and mortality."

A. did not provide any assistance to the police; he was not a witness in the trial; he did not make a victim personal statement.

10. The Offender was cautioned in 2016 when he was 15. Other than that he had no previous history of any criminality. At the time of the offence he was living at home with his mother in Trafford. He was working on a casual basis in two family businesses while studying for

an Open University degree. The author of the pre-sentence report did not find any basis for considering the Offender to be at risk of further offending, the offence in May 2023 having been wholly out of character. He was described as a polite young man who expressed remorse for what he had done.

11. The Offender realised that a custodial sentence was inevitable. He had been remanded in custody pending his trial, a period of approximately 9 months.

12. By reference to the evidence she had heard in the trial, the judge found that the Offender had driven the car in the way that he had on the spur of the moment. Her view was that he had acted in part out of panic.

13. The judge had been provided with a Sentencing Note by the Prosecution which referred to the relevant Sentencing Council Definitive Guideline. By reference to that guideline it was said that culpability was category A because there had been use of a highly dangerous weapon, namely the car. Harm was said to be category 2 because A. had suffered a grave injury.

14. The judge did not accept the Prosecution's submission on categorisation of the offence. In relation to culpability she referred to the narrative in the guideline which reads as follows:

> "Highly dangerous weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case."

15. The judge concluded that the circumstances in which the Offender had used his car to injure A. meant that it did not fall into the category of a highly dangerous weapon. Culpability therefore was in category B.

16. In relation to harm, the judge noted that A. apparently had made a good recovery. His injury had been serious. That was part and parcel of the offence. She found that it could not be described as grave. In consequence, the offence was a category 3B offence, with a starting point in the guideline of 4 years' custody, and a category range of 3 to 6 years. The

judge considered that the offence fell towards the lower end of that category range taking into account in particular the fact that the offence was committed on the spur of the moment. She stated that the Offender's remorse, good character and age amounted to significant mitigation. By that route she reached a sentence of 30 months' imprisonment for the principal offence.

17. The Solicitor General has argued that the judge fell into error in three respects.

- First, it was not reasonable to find that the car was not a highly dangerous weapon. Reliance was placed on **Hearn** [2022] EWCA Crim 1535 as an example of this court so categorising the use of a car to injure.
- Second, the judge should have found that A. suffered grave injury so as to place harm in category 2; lasting harm is not a precondition to greater harm: see **Williams** [2018] EWCA Crim 740.
- Third, the judge failed to have proper regard to the aggravating factors, namely the intoxication of the Offender and the fact that he left the scene; rather she gave excessive weight to the mitigating factors.

18. On behalf of the Offender, Mr Forte, who appeared at trial, submitted that whilst the sentence was undoubtedly lenient and merciful, it was not unduly lenient. He relied on the narrative to which the judge referred as justification for the proposition that where a man is driving his car for ordinary lawful purposes it is not a highly dangerous weapon. In contrast, **Hearn** was a case where the offender was already engaged in unlawful violence when he fetched his vehicle in order to use it as a weapon.

19. As to harm, Mr Forte accepted that an injury did not have to be permanent for it to be grave. Equally there was no evidence that the injury to A. had been of any lasting effect. In cases of causing grievous bodily harm with intent, the guideline relates to an offence where serious injury will have been caused in every case. There was no basis for saying that harm in this instance was greater than the base level. He argued that the proper balance of aggravating and mitigating factors was a matter for the judge. It could not be said that she had fallen into clear error.

20. The correct formulation of what amounts to an unduly lenient sentence is still that provided

by the then Lord Chief Justice in **Attorney General's Reference No 4 of 1989** [1990] 1 WLR 41:

> "A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

21. For us to conclude that this sentence was unduly lenient we must find that the judge fell into clear error in her categorisation of the offence. In our view unless that error can be established, it will not be possible to demonstrate undue leniency.

22. This is a case in which it is relevant also to refer to the words of the then Lord Chief Justice following those that we have just cited, namely:

> "… it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature."

23. It follows that our assessment of the judge's approach must take full account of the fact that she heard the trial. Her findings of fact in relation to the circumstances of the offence could only be impugned if it could be said that they were in some way irrational. That is not suggested on the part of the Solicitor General. Thus, her view of culpability must be judged on the basis that the Offender was driving without any criminal intent when, without warning, the situation with A. arose.

24. The Solicitor General is correct to point out that in most cases where a vehicle is used to cause injury it will amount to the use of a highly dangerous weapon. **Hearn** is but one example. We refer also to **Forrest** [2022] EWCA Crim 1715. In that case the victim did not suffer any significant long term injury albeit that it did amount to serious harm. The argument on appeal was the lack of significant injuries showed that the vehicle was not highly dangerous. This argument was rejected as a conflation of harm and culpability. What could not be argued in that case was that the use of the vehicle was an unexpected event. The offender had engaged in violence before using the vehicle as a weapon.

25. In this case the judge's conclusion was not linked to the harm suffered by A. She expressly

assessed the nature of the weapon by reference to the Offender's culpability. He had been driving the car normally. Until a few moments before A. was struck by his car he had not intended its use as a weapon. The use of the car to inflict injury had arisen on the spur of the moment. In our judgment those were facts and circumstances which were relevant to the categorisation of the car as a weapon. Weapon it clearly was; the question is whether it was highly dangerous in the hands of the Offender. The position of the Offender as described was in our judgment unusual. A reasonable assessment of his overall culpability would not place it into the highest category. We do not consider that the judge's approach was unreasonable or open to any principled objection, certainly none that would render the sentence following her assessment unduly lenient.

26. The categories of harm in the current guideline for the offence of causing grievous bodily harm with intent are very different to those which applied in 2018 when **Williams** was decided. A revision of the guideline, which took effect on 1 July 2021, was intended, *inter alia,* to allow closer analysis of harm in each case, rather than considering simply whether harm was more or less serious in the context of the offence. Any offence of causing grievous bodily harm with intent will involve serious harm. Whether such an injury is *grave*, within the meaning of that term for the purposes of category 2 harm in the guideline, will be a matter of judgment in each case. So long as the judge does not take into account irrelevant factors and/or does not fail to have regard to relevant factors, that judgment must be accorded due respect. Here, the judge took into account the relatively transient nature of the injury. That was a permissible approach, particularly so given the reference within category 2 harm in the guideline to *permanent irreversible injury*. There clearly will be cases where the injuries are so grave in the relatively short term that they satisfy the definition of *grave injury*. We do not consider that the injuries suffered by A. obviously fell into that category. The judge was entitled to take the view she did.

27. Once the offence was categorised as a category 3B case within the guideline with a starting point of 4 years, the judge was obliged to conduct a balancing exercise of aggravating and mitigating factors. It legitimately can be said that the reduction from the starting point by

18 months was very generous. Mr Forte is right to acknowledge that this was a lenient sentence. We would prefer to describe it as a merciful sentence. However, we do not consider it was so far outside the bounds of appropriate sentencing to amount to an unreasonable sentence. That means that the sentence cannot be categorised as being unduly lenient. We refuse leave to refer the sentence.