



SHERIFF APPEAL COURT

**[2017] SAC (Crim) 12
SAC/2017/000398/AP**

Sheriff Principal M M Stephen QC
Sheriff AM Cubie

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL M M STEPHEN QC

in

APPEAL AGAINST SENTENCE

by

SHAUN DIVERS

Appellant:

against

PROCURATOR FISCAL, AIRDRIE

Respondent:

**Appellant: Stephenson; Sol. Advocate, Paterson Bell, Edinburgh for McCue Legal, Glasgow
Respondent: Hughes AD; Crown Agent**

16 August 2017

[1] On the 12 June 2017 at Airdrie Sheriff Court the appellant appeared for trial charged with three contraventions of the Road Traffic Act 1988 said to have occurred on 11 February 2017.

[2] Immediately prior to the trial commencing the appellant tendered a plea of guilty to charges 1 and 3 on the complaint which are in the following terms:

“(001) on the 11th February 2017 at 16 Blackhill Gardens, Glasgow, you SHAUN PATRICK DIVERS did take and drive away a motor vehicle, namely motorcar registered number S16 EJR without having either the consent of the owner thereof or other lawful authority;
CONTRARY to the Road Traffic Act 1988, section 178(1)(a)

(003) on the 11th February 2017 on a road or other public place, namely the northbound carriageway of the M80 Motorway at Moodiesburn, you SHAUN PATRICK DIVERS did drive a mechanically propelled vehicle, namely motorcar registered number S16 EJR without due care and attention or without reasonable consideration for other persons using the road or public place and did drive said vehicle from the offside lane into the nearside lane of said carriageway, collide with motor vehicle registered number SK62 WDX, then being driven there by Alan Merry, c/o the Police Service of Scotland, whereby said vehicle registered number SK62 WDX was damaged and said vehicle driven by you did swerve across the carriageway, repeatedly roll over and collide with a barrier there whereby said vehicle was damaged and you were injured;
CONTRARY to the Road Traffic Act 1988, section 3 (As Amended)”

[3] The appellant was sentenced by the court to fines of £150 and £600 on charges 1 and 3 respectively and was disqualified from holding or obtaining a driving licence for a period of one year. The appeal is directed to the imposition of the period of disqualification and whether the sheriff ought to have moderated any penalty on account of his plea which avoided the trial proceeding.

[4] It is argued that the imposition of a period of disqualification was inappropriate and excessive and, in any event, there being a utilitarian value in the plea on the date of trial any period of disqualification ought to have been discounted. The Appellant contended that the careless driving amounted to a momentary lapse; there was no excessive speed; that the sheriff therefore erred in considering this to be a serious breach of section 3 and that she has given insufficient regard to the consequences of disqualification for the appellant who was a trainee mechanic. A period of disqualification would inevitably lead to loss of employment.

Should the court consider that a period of disqualification is justified the sheriff erred in failing to afford some discount by reducing the period of the disqualification. The plea on the date of trial had certain utilitarian value for the court and for civilian witnesses quite apart from police witnesses.

[5] The appellant's driving on the day in question caused a collision between the vehicle he was driving and another vehicle. Both vehicles were damaged and the appellant sustained injury as a result of his vehicle rolling several times before coming to rest.

Focussing on the nature of the appellant's driving it is important to recognise that he was on a motorway and allowed his vehicle to drift from one lane into another causing the collision.

Lane discipline is essential on any road but especially on a fast moving road such as a

motorway. The appellant's driving demonstrates poor control and attention. The

consequences were significant with damage to both vehicles. The appellant had no

permission and therefore no entitlement to be driving the vehicle in question. The

appellant's driving allied to his short but poor driving record leads us to the conclusion that

a period of disqualification of this length was entirely justified. The sheriff was made aware

of the appellant's employment circumstances and clearly took this into account. We consider

the argument that the careless driving offence did not justify a period of disqualification to

be devoid of merit.

[6] The question of discount remains to be considered. A plea immediately prior to trial

cannot be described as an early plea. Nevertheless the court in *Gemmell v HM Advocate*

(2012) SLT 484 and *Murray v HM Advocate* [2013] HCJAC 3 recognised that sparing

complainers and other witnesses from giving evidence may in some circumstances justify

discount. In many cases it is recognised that witnesses are not being spared an ordeal by not

having to give evidence. Road Traffic cases such as this are a good example as many

witnesses are police officers. A plea immediately prior to trial in such cases would attract at most a token discount. Here the sheriff has considered the question of discount. She notes that witnesses which include a civilian witness were present at court and ready to give evidence. She did not consider it appropriate to grant any modification. Having regard to what was said in *Gemmell and Others v HM Advocate (supra)* it is important to recognise that there is no entitlement to discount as that is a question for the judgement and discretion of the sentencing court. There must be convincing utilitarian reasons for allowing discount. The decision of this court in *McInally v Procurator Fiscal Edinburgh* [2016] SAC (Crim) 5 adopted the principle that if the sentencing sheriff has given cogent reasons for allowing or declining to apply discount it will only be in exceptional circumstances that this court will interfere. That follows the dicta of the Lord Justice General in *Gemmell* at paragraph [81]. In this case the sheriff has given reasons which we consider are logical, sustainable and cogent standing the stage the plea was tendered and the nature of the charge. We re-affirm the principle that it is only in exceptional cases that this court will interfere with a discretionary decision on discount for which the sentencing sheriff has given cogent reasons. The appeal is therefore refused.