

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 202100918/A3

Neutral Citation No: [2021] EWCA Crim 813



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 18 May 2021

Before:

LADY JUSTICE NICOLA DAVIES DBE
MR JUSTICE SPENCER
MR JUSTICE FORDHAM

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

REGINA
V
MOHAMMED ISHFAQ

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR P RATLIFF appeared on behalf of the Attorney General.

MR A MULLER appeared on behalf of the Offender.

J U D G M E N T

(Approved)

LADY JUSTICE NICOLA DAVIES:

1. This is an application by Her Majesty's Attorney General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which he considers to be unduly lenient. The offender is Mohammed Ishfaq. He is aged 34, having been born on 17 September 1986. We grant leave.
2. On 4 March 2021, in the Crown Court at Birmingham, the offender changed his plea to guilty to the offence of causing death by dangerous driving, the particulars being that on 9 November 2017 he caused the death of Krishna Droch, by driving his Vauxhall Zafira dangerously on Rookery Road, Handsworth. The offender maintained his plea of not guilty to count 2, a charge of perverting the course of justice, the particulars being that on 9 November 2017 he arranged for his car to be destroyed by fire. Count 2 was ordered to lie on the file on the basis that the facts contained in count 2 would form part of the facts on count 1.
3. On 4 March 2021 the offender was sentenced to six years three months' imprisonment. He was disqualified from driving for ten years and ordered to take an extended driving test.

The facts

4. On the morning of 9 November 2017 the offender and another male, Holness, consumed a combination of heroin, crack cocaine and a synthetic cannabinoid, "Mamba". In a car driven by the offender, they left their home address in order to sell Class A drugs in Handsworth. When they arrived at nearby Sycamore Road they saw two vehicles waiting for them. It was the belief of the offender and Holness that the men in the two vehicles intended to rob them and/or cause physical harm. As a result they drove away with the two vehicles in pursuit.
5. The chase took place at speed, in a busy residential area subject to a 30 mile per hour speed limit. Having left Sycamore Road the offender turned left onto Queen's Head Road, a two-lane single carriageway. The offender's vehicle moved into the centre and onto the wrong side of the road in order to pass a parked van on the nearside and prevent one of the pursuing cars from overtaking. The offender's vehicle travelled to the junction with the A41, Soho Road (a typically busy road). The traffic lights controlling the junction were red with a vehicle waiting at the lights. The offender's vehicle overtook the stationary vehicle and crossed the junction while the lights remained on red, travelling onto the A4040 Rookery Road, a two-lane single carriageway. The two pursuing vehicles followed the offender, the second crossing as the lights changed to green. On Rookery Road the offender overtook a double decker bus and a van by driving into the oncoming lane; in so doing his vehicle was closely followed by the pursuing vehicles.
6. The victim was walking north on Rookery Road on the east side before reaching a crossing which permitted pedestrians to safely cross at the intersection of Rookery Road with the roads on the east and west. The crossing comprises a ramped area of kerb on either side with a central reservation formed by raised kerb areas to the pedestrian's left and right, each mounted with a bollard bearing a "keep left" sign. The approach to the crossing is marked with traffic calming "teeth" marks perpendicular to the kerb and hatch markings in

the centre of the road guiding vehicles away from the centre. As the offender's vehicle approached the crossing it was travelling at between 50 to 56 miles per hour. Immediately before the crossing it would appear that the offender lost control of his vehicle. Whether immediately before or when he lost control, the vehicle moved into the oncoming lane and directly into the path of the victim who had stepped out into the road. The offender's vehicle struck the victim with such force that she was thrown back in a cartwheel motion, causing her body to collide with and thereafter be flipped over the pedestrian railings at the corner of the junction. The victim sustained substantial impact injuries. Her death was almost instantaneous.

7. The offender was aware that he had hit the victim, shouting to Holness: "I've killed her". It was not until he had driven a further nearly two miles that he stopped. Having done so, the offender and Holness took more drugs, removed anything that could connect them to the vehicle and made their escape. They were collected by another vehicle and driven to their home.
8. The offender persuaded Holness to return to the vehicle, burn it and then to confess to the police that he (Holness) had been the driver. The offender gave Holness drugs, offering him money and promising him that he would be supplied drugs, clothes and trainers in prison. The offender took Holness and another male to the site of the vehicle. The offender left and Holness and the male set about the destruction of the vehicle by fire. Later the offender drove Holness to a police station, so that he could confess to the crime. Holness told police that he was the driver of the vehicle and was arrested. Having consulted with a solicitor, Holness then told the police the truth as to what had occurred.
9. The offender was arrested and interviewed on 22 January 2018. He replied "no comment" at interview.
10. Before the sentencing court was a Victim Personal Statement provided by the victim's son on behalf of the family. It described the victim as a loving mother, dedicated wife and inspirational grandmother. Her loss continued to be felt. The impact of the victim's death upon her husband was said to have left him half the man that he had been.
11. No pre-sentence report or psychiatric report was ordered or prepared. Evidence was adduced that in April 2020 the offender had suffered a near fatal stab wound to his heart, which resulted in hypoxic brain injury. Police officers familiar with the offender informed counsel that this had led to a significant personality change, evidence which the judge accepted as being genuine.
12. The offender was aged 31 at the time of the offence. He has 36 previous convictions recorded on 16 occasions between July 2002 and August 2019. The offences fall into two categories: motor vehicle offences and possession of controlled drugs. They include the following:
 - August 2004 - offences of dangerous driving, using a vehicle whilst uninsured and related driving offences;
 - November 2006 - taking a motor vehicle without consent and using a vehicle whilst

uninsured;

- December 2007 - conspiracy to supply heroin;
- June 2008 - driving whilst disqualified and a related driving offence;
- March and June 2013 - possession with intent to supply heroin and crack cocaine and related offences;
- On 23 January 2018, for offences of dangerous driving, using a vehicle whilst uninsured and possession of Class C drugs, the offender was sentenced to 13 months' imprisonment and disqualified from driving for three years and six months. The facts were that at 16.13 on 21 January 2018 the offender failed to stop when required to do so by uniformed officers. He drove off at speed in a dangerous manner contravening a red traffic light, overtaking other vehicles, causing them to take evasive action and thereafter crashed into a house at a road junction.

13. In sentencing the offender the judge identified the fact that his driving involved a deliberate decision to ignore basic rules of the road and an apparent disregard for the obvious danger caused to other road users and pedestrians. The judge described it as a chase over just under half a mile, during which the offender performed a series of dangerous manoeuvres. The judge concluded that the appropriate starting point for sentence was at Level 2 of the definitive Guideline, the driving fell towards the upper end of Level 2, the starting point is five years' custody the range being four to seven years.

14. The judge identified four significant aggravating features:

- i. the failure to stop and immediate planning as to how the offender could avoid responsibility for his actions;
- ii. directing Mr Holness to burn the car in an attempt to frustrate the police investigation. Later offering him money in return for going to the police and falsely telling them he was the driver;
- iii. the offender was under the influence of Class A drugs at the time of the offence although the evidence fell short of amounting to gross impairment;
- iv. the offender's relevant previous convictions: dangerous driving in 2004, further driving offences in 2006 and 2008 and two months after the index offence, the subsequent offence of dangerous driving which involved a police pursuit and the offender driving through a red traffic light.

The judge determined that the previous conviction, coupled with the other significant aggravating features, took the sentence beyond the category range.

15. As to mitigation, the judge did not accept the submission made on behalf of the offender that the driving was in response to a proven and genuine emergency, namely he was being

pursued by men who were intent on causing him harm and their actions were therefore a significant cause of his behaviour. The judge stated that the death of Mrs Droch was caused because the offender chose to involve himself in drug dealing; that being an activity that carries with it the obvious risk of being attacked by rivals. As such Mrs Droch's death was a direct and foreseeable consequence of the offender's decision to involve himself in serious crime. In those circumstances such mitigation as was provided in the context of the pursuit was limited. We agree with this aspect of the judge's assessment.

16. The judge gave a 10% discount for the plea of guilty on the first day of the trial. The judge took account of the significant brain injury sustained in April 2002 and accepted that it had led to a high level of disability including significant memory problems and a changed personality. The judge treated the offender's ill-health and consequent vulnerability as mitigatory but noted that he would receive appropriate care within the prison estate. He accepted that the offender was motivated to tackle his long-term drug addiction and also accepted that conditions in the prison at this time of pandemic would be difficult.
17. The judge took what he described as a provisional sentence of seven years' imprisonment and deducted from it seven months in order to reflect the guilty plea. The judge considered the appropriate period of disqualification as being seven years and he extended it by three years to reflect the period to be spent in custody, a total of ten years' disqualification.

Submissions of the Solicitor General

18. On behalf of the Solicitor General it is submitted that the sentence imposed was unduly lenient, in that:
 - i. The Guideline provided that an offence falls within Level 1 where there is a group of "determinants of seriousness which in isolation or smaller number would place the offence in Level 2". Identified are the facts that the offender travelled at "a greatly excessive speed" and that his driving took place "whilst ability impaired as a result of the consumption of drugs". It is the submission that the appropriate starting point was accordingly Level 1, a starting point of eight years' custody, a range of seven to 14 years.
 - ii. Further, it is contended that the judge gave insufficient weight to the seriously aggravated features of the offender's conduct in destroying the evidence and seeking to persuade another to make a false confession and his record of previous convictions. Those factors alone are said to warrant a starting point of Level 1.

The respondent's submissions

19. The respondent repeats the submission made to the sentencing judge, namely that the offender drove dangerously from Sycamore Road to the collision site solely to escape the two cars pursuing him and/or the occupants of those two cars. It was the offender's belief that had he not driven away he and Mr Holness would have been seriously injured or killed by the cars and/or their occupants. Immediately prior to the collision he did not

deliberately drive on the wrong side of Rookery Road, he had lost control of the car due to the excessive speed at which he was driving for the reasons identified. He did not see the victim prior colliding with her.

20. As to Level 1 and the description of the driving there, it is said that by reason of the position in which the offender found himself, namely the threat from the occupants of the other cars his decision was not freely made; it was not a deliberate decision to ignore the rules of the road nor was it a flagrant disregard of the same.
21. It is conceded that the offender's previous convictions for motoring offences and driving off following the collision in order to avoid detection are aggravating features. The excessive speed is also conceded. It is the respondent's contention that the driving created a substantial risk of danger which would bring it within Level 2 of the definitive Guideline.

Discussion and conclusion

22. In approaching the sentence for the offence of causing death by dangerous driving, we note that the definitive Guideline applies to a "first-time offender". The seriousness of the driving has to be assessed by consideration of the "determinants of seriousness" set out in the Guideline. Assessing the determinants, we find that the driving was dangerous but cannot properly be described as a prolonged course of driving. We note that the chase took place in a residential area, at shortly after 11 o'clock in the morning, when people were going about their daily life. To drive at a speed which was nearly double the legally permitted limit is, in our view, not only excessive in such a residential area; it was dangerous. Further, in so driving, the offender had no regard to vulnerable road users: a pedestrian is such a road user. Moreover the victim had chosen to cross the road at an identified crossing. The speed at which the offender drove in a residential area and the vulnerability of Mrs Droch each represent a determinant of seriousness.
23. As to the nature of the offending and the appropriate level within the Guideline, we note that Level 1 encompasses driving that "involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others". In our judgment, this accurately describes the decision made by the offender. As a matter of fact he did ignore the rules of the road in overtaking, driving through red traffic lights and driving onto the wrong side of the road. He did so because he was dealing in drugs and he had placed himself in a position where he was at risk of attack from rivals and that in fact is what materialised. The judge rightly described this as a chase in which the offender performed a series of dangerous manoeuvres. As such, we conclude that the appropriate level within the Guideline is Level 1. In identifying the starting point within Level 2, we believe the approach of the judge was unduly lenient.
24. Our starting point within Level 1 is eight years' custody. We accept the four aggravating features identified by the judge set out at paragraph 14 above. Taking account of these aggravating features we would raise the sentence of eight years' custody to ten years' custody. We reduce it to one of nine years' custody to reflect, in particular, the brain injury sustained by the offender and the difficulty of custody for him, not only at a time of Covid but by reason of his health. Allowing for mitigation, the sentence would be one of nine years' custody, to that would be applied 10% discount to reflect his guilty plea.

Allowing for the discount, we have arrived at a sentence of eight years' imprisonment. It follows, and we so find, that the sentence of imprisonment of six years and three months was unduly lenient. We quash that sentence and impose a sentence of eight years' imprisonment.

25. As to disqualification, the judge imposed a discretionary period of seven years with which we do not seek to interfere. As to the extension period of three years, such a period should represent one-half of the custodial term, thus the period should now be four years. Accordingly, we quash the extension period of three years and impose an extension period of four years' disqualification, making a total period of disqualification of 11 years.
26. The judge imposed disqualification until such time as the offender had passed an extended re-test. By section 36(7)(b) of the Road Traffic Offenders Act 1988, a sentencing court cannot impose a further order to take such a test where a previous one has been imposed and remains extant (*R v Weafer* [2019] EWCA Crim 1072). On 23 January 2018 the offender, for the offence of dangerous driving, was disqualified for a period of three years six months until he passed an extended re-test. It follows that this aspect of the judge's sentence which required a re-test is unlawful and it is quashed.
27. Accordingly, and for the reasons given, we allow the Reference of the Attorney General.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk