

IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202302832 A1

Royal Courts of Justice

Tuesday, 14 November 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE JAY
HIS HONOUR JUDGE DENNIS WATSON KC

REX
v
HARRY JONES

REFEERENCE BY HM SOLICITOR GENERAL
UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

Ms S. Przybylska appeared on behalf of the Applicant Solicitor General.
Ms F. Gerry KC appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 On 3 November 2019, Harry Jones, then aged 27, and an acquaintance of his named Daniel Tulley, a man aged 31, had a disagreement. Precisely what the disagreement was about does not matter for our purposes. The consequence was an exchange of Facebook messages in which Mr Tulley suggested that they should have a fight to which Mr Jones responded, "I'm game, come here."
- 2 During the following day Mr Tulley sent further messages suggesting a fight. At about 5.15 in the afternoon, Jones left his home in Wolverhampton in his Range Rover. He drove to the nearby town of Bloxwich with his father and two other men in the car. Bloxwich was where Mr Tulley lived. They were looking for Mr Tulley. They went to the street where he lived. They saw Mr Tulley's partner. Jones, who was angry and red in the face, asked where Mr Tulley was and he was frustrated when she would not tell him. He telephoned Mr Tulley who, apparently, agreed to meet for a fight. Jones then left in a Range Rover; at this point he was the driver.
- 3 Around 10 minutes later the Range Rover arrived in the road where Mr Tulley was standing with a female friend. They were waiting for a taxi. Eyewitnesses said that there were at least two people in the car. Differing descriptions were given of the driver: one was consistent with the appearance of Jones, another described the driver as having a beard, Jones being clean-shaven. In any event, the Range Rover accelerated. It went on to the wrong side of the road. It mounted the kerb, it struck Mr Tulley. Mr Tulley's friend was knocked to the ground but fortunately suffered no significant injury. Mr Tulley, however, appeared to be stuck to the Range Rover as it drove on. The car then stopped some distance down the road. Mr Tulley fell to the ground. The Range Rover drove away.
- 4 Mr Tulley suffered very serious injuries: multiple skull fractures, subdural and subarachnoid bleeding, traumatic brain injury, scalp laceration. He was taken to hospital where he underwent emergency surgery. He was in an intensive care unit for about a fortnight. He

then spent a further month in hospital before being discharged just before Christmas 2019. We shall consider the long-term consequences of his injuries shortly.

- 5 A witness at the scene had taken the registration number of the Range Rover. The police traced the car to a property belonging to Jones's family business. On 6 November 2019 Jones went to a police station. When interviewed, he said that he was not guilty but otherwise made no comment. He was charged with causing grievous bodily harm with intent.
- 6 Jones was sent for trial in the Crown Court at Wolverhampton. On 15 October 2020, he pleaded not guilty at the plea and trial preparation hearing ("PTPH"). Because of the effects of the pandemic on court sittings, the first available date for trial was 3 November 2021, Jones being on bail. In late October 2021 that date was vacated at the defence request to accommodate the availability of leading counsel who had been engaged to represent Jones. The next available date was 5 October 2022. That trial date was effective.
- 7 Jones was tried by His Honour Judge Berlin and a jury. His defence at trial was that he had been a passenger in the Range Rover at the relevant time. He accepted that there had been an arrangement to fight Mr Tulley, but he had not assisted or encouraged the driver to drive at Mr Tulley and he did not intend any really serious harm. The case was left to the jury on alternative bases: either Jones was the driver or Jones had encouraged the driver to drive at Tulley.
- 8 On 7 October 2022 Jones was convicted of causing grievous bodily harm with intent. The trial judge ordered a presentence report. He also required up to date evidence about Mr Tulley's injury and the effect. Sentence was adjourned for those purposes. Unfortunately, the trial judge was then unable to sit for an extended period due to illness. It was eventually determined that another judge would have to conduct the sentencing hearing. So it was that on 21 July 2023 Jones was sentenced by Her Honour Judge Campbell to a term of 10 years' imprisonment. HM Solicitor General now applies for leave to refer the sentence, pursuant

to section 36 of the Criminal Justice Act 1988, as unduly lenient.

9 Jones was 31 at the date of his sentence. In July 2015 he had been convicted of driving a motor vehicle with excess alcohol for which he was fined and disqualified. Otherwise, he had no previous convictions.

10 The pre-sentence report prepared for the sentencing hearing was dated 2 November 2022. The author noted that Jones continued to deny the offence. Asked about the impact on Mr Tulley, the report recounted Jones's response as follows:

"When prompted to consider the impact upon the victim Mr Jones recognised that serious harm had been inflicted upon him. He described it as 'heart-breaking' when he thinks about the injuries caused to Mr Tulley. Throughout the interview he said that he feels remorseful for what happened, which struck me as somewhat paradoxical given that he denies being the driver of the vehicle."

The report went on to say:

"The circumstances of the index offence give rise to serious concerns about risks of harm and recidivism. It is extremely fortunate the victim survived a near fatal injury. Mr Jones appears to have no qualms about using extreme levels of violence to resolve conflict and has demonstrated a willingness to inflict serious harm. He made no attempt to offer any aid to the victim and fled the scene. Mr Jones's involvement in serious violent offending and the risk posed to the victim as well as the wider public by such conduct is of ongoing concern."

11 The author of the report indicated that Jones viewed his familial relationships as a positive influence. However, this had to be set against the fact that Jones had set out on the day in question with his father in the car with him. Overall, Jones was assessed as presenting a significant risk of causing serious harm to others by the commission of specified offences in the future.

12 The judge had a very large number of letters from family members and friends of the offender expressing their positive view of the offender's character and of the work he did to support both his family and the wider community. In the course of the hearing just one of those letters was read out to us. We have looked at them all. Concerns were expressed

about the effect his incarceration would have on that part of the family business for which he was responsible. It was noted by the time of sentence his wife was pregnant so that any sentence imposed on him would remove his support from her and in due course from their child.

13 Mr Tulley's long-term partner provided a victim personal statement. She said that he had suffered a permanent brain injury, he had been changed by his injuries and was difficult to live with, "the old Dan does not exist anymore, and he will never be as he was". He was paranoid and anxious, fearing large groups of people and the traffic around him. His short term memory was severely affected. He had permanently lost his sense of taste and smell. He suffered from mood swings and had tantrums like a small child. He suffered constant pain. He had been offered further surgery but could not face it. He had a large visible scar on his head about which he was self conscious: "I feel like on that night a part of Dan died ... we are living a constant nightmare ... "

14 The judge had medical evidence from Dr Harriss, a consultant in rehabilitation medicine. Mr Tulley had spent 10 months in residential rehabilitative care after his discharge from hospital. In June 2021 Dr Harriss's conclusion was that Mr Tulley, who had suffered a severe brain injury, would never regain the capacity to work again. He struggled with ongoing and profound cognitive problems and imbalance. The best that could be expected was that he might regain the ability to manage his own affairs with some support and to participate in community activities for recreation. Dr Harriss anticipated no significant improvement in his cognitive and physical abilities.

15 There was also a short report available to the judge from a specialist psychiatrist, a Dr Bhatta. This indicated that there were no current psychiatric problems.

16 At the sentencing hearing the prosecution argued that the offence fell into category 1A within the relevant sentencing guideline. The high culpability factors relied on were use of a highly dangerous weapon or equivalent, significant planning and revenge. It was said that

at least two of the category 1 harm factors were present; that led to a starting point of 12 years and a category range of 10 to 16 years.

- 17 Defence counsel made only passing reference to the guidelines during his mitigation. He acknowledged that it was of little consequence whether the offender had been convicted as a principal or as a secondary party. He emphasised that there had been long delays in the proceedings. He stressed the impact the offending had had on Jones's close and extended family and on his friends.
- 18 In imposing sentence the judge stated that the offender's culpability was high because a highly dangerous weapon had been used in the assault. She said that harm fell into category 1 because Mr Tulley had suffered a particularly grave or life threatening injury. The judge took into account any references which spoke positively about the offender's character. She said that balancing the gravity of the offence with the positive good character of the offender meant that the sentence fell at the bottom of the category range. Thus, she imposed a sentence of 10 years' imprisonment.
- 19 On behalf of HM Solicitor General, it is argued that the judge failed to reflect the multiple culpability factors. These should have led the judge to move up towards the top of the category range. The offender's good character should have had limited force because, as the guideline makes clear, "this factor is less likely to be relevant when the offending is very serious." Moreover, this was not a case of a man making a bad decision on the spur of the moment. The offender had taken time and effort to track down Mr Tulley. The reduction for good character ought to have been very limited.
- 20 The offender was represented before us by Felicity Gerry KC. She was not counsel at the trial or sentence. She submitted by reference to the psychiatric evidence that Mr Tulley's prognosis was good which reduced the severity of the harm. She put it to us today that the victim has at least some quality of life. She relied on the remorse referred to in the presentence report. She argued that the exceptional good character evidence and the

substantial delay were both substantial mitigating factors. She placed particular weight on the pregnancy of the offender's wife. Ms Gerry cited three authorities to us. With respect to her, none seems to us to be of assistance. None purported to set out any point of principle. The question is whether this judge properly applied the guideline taking into account the particular factors of this case.

21 Ms Gerry's overall submission was that the sentence was within the relevant category range and it was an appropriate sentence given the mitigation available to the offender. She invited us to draw back from interfering with the judge's sentence for fear that this would discourage judges who are placed in the position that this judge was, namely sentencing after a trial that they did not conduct, from taking a robust view. We do not fully understand this submission, but the fact of the matter is that this judge was not the trial judge. So that means we are in just as good a position as her properly to assess where this offence lay within the range of offending of its kind.

22 The correct formulation of what is an unduly lenient sentence is still that provided by the Lord Chief Justice in *Attorney General's Ref. 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."

It follows that for us to conclude that this sentence was unduly lenient we must find that it was not reasonably appropriate for the judge to impose a sentence at the bottom of the category range for a category 1A offence.

23 Two high culpability factors were clear and obvious. First, there was the use of a highly dangerous weapon or equivalent. Second, Mr Tulley was obviously vulnerable; he was a pedestrian standing on the pavement. The judge did not refer to this latter factor.

24 We consider that this also is a case where there was significant planning. So far as Mr Tulley was concerned, he was due to meet the offender for a fight. On the face of it, there was no question of a weapon being used. The offender, on the other hand, drove around in a large car for some time looking for Mr Tulley. When he saw Mr Tulley he did not stop

the car or cause the car to be stopped and get out ready for the proposed fight. Rather, he drove or caused the car to be driven at Mr Tulley. Where there are multiple culpability factors the judge must consider moving up the category range.

25 In relation to the offence of causing grievous bodily harm with intent, the guideline deals with this point specifically in two ways. First, in words common to a number of guidelines, it is said that –

"A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below."

Second, there is a rubric specific to this offence as follows:

"For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the category range."

26 This rubric was considered by this court in *Fleming* [2022] EWCA Crim 250 at [22] to [26]. In *Fleming* itself the vulnerability of the victim was extreme which could have justified a sentence higher than the category range.

27 In this instance it is the extreme nature of the combination of high culpability factors which applies. The offender used his Range Rover as a weapon, whether he was driving it himself or directing someone else. A Range Rover is a large and heavy car. Its use involved particularly high culpability. Added to that Mr Tulley was in a very vulnerable position. There was nothing he could do to avoid the attack on him.

28 Turning to harm, we reject the proposition that the medical evidence demonstrates that Mr Tulley's prognosis is in any way hopeful. Dr Harriss's evidence is directly to the contrary. No evidence we have seen since then has altered the position as described by Dr Harriss. This is unsurprising. Mr Tulley suffered a severe brain injury. The judge referred to harm as falling into category 1 because the injury was particularly grave or life threatening. The other two elements of category 1 were also present, namely, injury results in physical or

psychological harm resulting in lifelong dependency on third party care or medical treatment and offence results in permanent irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out their normal day-to-day activities or on their ability to work. The evidence of Dr Harriss and what is set out in the victim personal statement amply justifies the conclusion that those features apply here. This factor was a further reason to elevate the sentence to the top of the category range, if not beyond. The aggravating factor apparent from the circumstances was the offender's decision to leave the scene with Mr Tulley lying gravely injured in the road.

- 29 There were mitigating factors but, in our judgment, they were of relatively limited effect. There was a significant delay between the offence and the final sentence. During that time the offender did not commit further offences, which is to his credit. However, the delay itself was caused by the offender contesting the case. He is not to be penalised for that. Equally, he can hardly claim delay of itself as a mitigating factor. Had he pleaded guilty at the PTPH in October 2020, he would have been sentenced at some point a few weeks or at most a month or two thereafter. In our judgment his expressed remorse can carry little or no weight. The reasons are identified by the author of the presentence report. The offender had no relevant previous convictions. The relevance of this factor can be that it indicates a lower risk of reoffending. That was not the case in respect of this offender as the presentence report made clear. It is the case that the offender was of positive good character. He had many people speaking very well of him. However, the guideline provides that this factor is less relevant where the offending is very serious as this was.
- 30 We have concluded that the judge should have moved up from the starting point to the top of the category range at stage 1 of the sentencing process. Giving as much weight as possible to all of the mitigating factors we have referred to but also having regard to the fact that the offender simply drove away leaving Mr Tulley grievously injured in the road, the least sentence that we consider should have been appropriate for this very serious offending was 14 years' imprisonment. In those circumstances we give leave to HM Solicitor General

to refer the sentence imposed by the judge as unduly lenient.

- 31 We quash the sentence of 10 years' imprisonment and substitute a sentence of 14 years' imprisonment. That will entitle the offender to release after serving two thirds of that sentence.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*