

**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.**



Neutral Citation Number: [2024] EWCA Crim 1612

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CHELMSFORD

HHJ MARY LORAM 42MZ1823321

CASE NO 202403410/A5

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 11 December 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GARNHAM

RECORDER OF MANCHESTER  
(HIS HONOUR JUDGE DEAN KC)  
(Sitting as a Judge of the CACD)

REX

V

CHRISTOPHER DELARUE

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

MR C RUSH appeared on behalf of the Appellant.

MR C KERR appeared on behalf of the Crown.

**J U D G M E N T**

MR JUSTICE GARNHAM:

1. On 22 July 2024, in the Crown Court at Chelmsford before HHJ Loram KC, the appellant (who was then aged 64) was convicted of the offence of causing death by careless driving. On 11 September 2024, before the same judge, he was sentenced to 28 months' imprisonment. He was also disqualified from driving for a period of 35 months (21 months plus an extension period of 14 months). He appeals against sentence by leave of the single judge.

*The Facts*

2. Shortly after midnight on 20 August 2021, the appellant left his partner Karen Bailey's house following an argument and got inside the cab of his flatbed truck. Ms Bailey came out of the house and approached the truck before walking away. The appellant reversed the vehicle away from Ms Bailey as she walked back into the road. Although the incident was captured on dash cam footage, it was not possible to tell whether Ms Bailey went towards the truck as it was moving or if the vehicle struck her directly. In any event, on the facts, Ms Bailey was indeed struck, run over and seriously injured. Subsequently, Ms Bailey died from the injuries she sustained. Thereafter the appellant drove away.
3. A neighbour, Lorraine Scarff, heard moaning noises coming from the property. She went outside and found Ms Bailey on her back in the road. Ms Scarff immediately called the emergency services. Paramedics arrived at approximately 20 minutes past midnight and Ms Bailey was treated at the scene. Sadly however, she was declared dead at 01.13 hours. The cause of death was severe chest injuries. She had also suffered

fractured ribs, punctured lungs, a fractured pelvis and damage to the abdominal organs. Marks to the back of her thighs were consistent with tyre marks. A blood sample showed that Ms Bailey had consumed alcohol sufficient to cause a mild degree of intoxication. Cocaine consistent with recreational use was also found in her system. The appellant returned to the area as the ambulance arrived to tend to Ms Bailey. He then drove away. Police found him inside the vehicle shortly after 4.00 am and he was arrested.

### ***Sentencing***

4. The judge did not accept the appellant's explanation at trial that he thought the ambulance had been for an elderly neighbour. In sentencing the appellant, she said that she took the view that the appellant exhibited a total disregard for the presence of Ms Bailey in the road, and that meant that this was a case that fell just short of dangerous driving, with the consequence that the starting point was one of 2 years' imprisonment. In reaching that conclusion, she had regard to the fact that Ms Bailey was a vulnerable road user. She said the offence was aggravated by the fact that the appellant was driving a large vehicle and that he had driven off knowing he had struck Ms Bailey.
  
5. The judge acknowledged there was some mitigation in the fact of a relationship between the appellant and the deceased but said that that was tempered by the evidence about the nature of the relationship. She made some allowance for the fact of delay in the proceedings but said that that was reduced given that he had not offered to plead to the matter in respect of which he was convicted and the fact that the appellant had not accepted any responsibility for the death of Ms Bailey. The judge also took account of the fact the deceased's own conduct played a part in the incident, that the appellant was

essentially of good character and of the character references which she was provided.

### **The Argument**

6. Five grounds of appeal were advanced on the appellant's behalf in support of the argument that the sentence was manifestly excessive. First, that the learned judge erred in concluding that this was a category A case - it should have been placed in category B, it is said, with the starting point of 1 year. Second, the learned judge erred in concluding that the aggravating features were such as to raise the sentence by 8 months. Third, it is said the learned judge erred in concluding that there was "little or no" mitigation in the fact of the appellant's relationship with the deceased. Fourth, it is said that insufficient credit was given for the delay in bringing the proceedings and the late addition of the count upon which the appellant was convicted or his willingness to plead guilty to that count if it would have disposed of the case. Finally, it is argued that the disqualification from driving for 35 months was manifestly excessive.
  
7. On the appellant's behalf Mr Rush, who presented the case with great care and skill before us, argues that the dash cam footage demonstrates that the appellant did have regard to the presence of Ms Bailey in the road. He points out that at 06 minutes and 49 seconds on the dash cam footage, Ms Bailey walked towards the reversing vehicle, remaining on the pavement. At 06.55 minutes the vehicle moved forward but steered to the nearside away from Ms Bailey. Ms Bailey responded by beginning to cross the road. At 06.58 Ms Bailey stopped in the road and the appellant then steered to the right, away from her. Mr Rush says that this manoeuvre would have resulted in the vehicle not striking Ms Bailey had she remained stationary or indeed done anything other than

moving towards the vehicle. He argues that there was nothing to alert the appellant to the fact that Ms Bailey might move towards the moving vehicle.

### *Discussion*

8. We have viewed the dash cam footage with some care. We note that the speed reached by the vehicle during these manoeuvres was 11 miles an hour and that Ms Bailey was walking in the road in front of and in close proximity to the vehicle. The appellant knew that she was emotional, erratic and affected by drink and/or drugs. He was clearly able to see her in the road ahead of him. He swerved around her and drove away. Given her proximity, the appellant's speed of up to 11 miles an hour was markedly too fast for such manoeuvres.
9. At 6.59 minutes on the dash cam footage the vehicle mounted the kerb. Mr Rush argues that that was the same moment as the vehicle must have struck Ms Bailey and the rear wheel passed over her. The expert, he says, agreed that the mounting of the kerb may have obscured the impact or its affect to the driver of the truck. That is indeed one possible interpretation of the evidence.
10. It is conceded that the fact that the appellant did not stop and check Ms Bailey's whereabouts and welfare after he had hit the kerb, placed his driving below the standard of a careful and competent driver. In our judgment, viewing the evidence in the round, this piece of driving fell between categories A and B under the guidelines. We conclude that the judge was not justified in taking 2 years as the starting point. The fact that Ms Bailey was a vulnerable road user because of her condition and the fact that the

appellant was driving a large vehicle justified moving upwards within the second category. There was some mitigation, in our view, in the relationship between the appellant and the deceased which the judge did not wholly recognise. Further, as the judge did accept, the deceased's own conduct played a part in this incident. The appellant was essentially of good character and there were positive character references.

11. In our judgment, the proper sentence for this offence was one of 18 months' imprisonment. At that level it is necessary to consider suspension of the sentence but we are firmly of the view that, on the facts of this case, only a sentence of immediate custody was appropriate.

12. In those circumstances, it is necessary for us to consider the period of disqualification. In our view, the appropriate disqualification is 21 months plus an extension period of 9 months (being half the period of imprisonment), making a total of 30 months' disqualification. In those circumstances this appeal is allowed and we substitute for the sentence of 28 months' imprisonment a sentence of 18 months and we vary the disqualification period as we have just indicated.

13. LADY JUSTICE MACUR: I wonder if before the CVP links are closed that we could, as the Court, express our condolences to the family of the victim in this case. It was understandable that they would wish to observe the appeal. In that the sentence has been reduced, it does not in any way seek to suggest that the mother's life, for the observers are the daughters of the victim, was any less well regarded by us.

14. Mr Rush, the disqualification you have not...

15. MR RUSH: I did not address it because it seemed to me to be dependent on...

16. LADY JUSTICE MACUR: It appears to be correct.

17. MR RUSH: Having listened to my Lord's reasoning if I may say, there is nothing I

would seek to persuade you beyond that.

18. LADY JUSTICE MACUR: We have the expert down here who says it is correct and that is good enough for me.

19. MR RUSH: It is correct. Effectively add on after --

20. MR JUSTICE GARNHAM: I just wanted to make sure that we have the mathematics right while you were here.

21. MR RUSH: Best that I was walking speed, as I say.

22. LADY JUSTICE MACUR: Thank you very much, Mr Rush.

23. Mr Kerr, we did not need to call on you but we are very grateful for the courtesy you have extended both to the Court and also of course in memory of the victim.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)