Regina v Neil Talbot

No: 2012/3839/A5

Court of Appeal Criminal Division

23 October 2012

[2012] EWCA Crim 2322

Judgment

Lord Justice Pitchford:

1 This is an appeal against sentence with the leave of the single judge. On 24th February 2012 the appellant appeared at Maidstone Crown Court to face a two count indictment. Count 1 charged him with an offence of causing grievous bodily harm with intent to resist or prevent his lawful apprehension or detainer, contrary to section 18 of the Offences Against the Person Act 1861 . Count 2 charged him with an offence of dangerous driving on the same date, 30th November 2011. The appellant pleaded guilty to count 2 and his case was adjourned for a trial upon the more serious count. However, on 19th April 2012 he sought a Goodyear indication from the court. Having been informed that were he to plead guilty to count 1 he would be entitled to receive a discount of 20 per cent in respect of that plea, he changed his plea to guilty.

2 On 15th June 2012 he appeared before His Honour Judge Carroll when he was sentenced in respect of count 1 to eight years' imprisonment and count 2 to 15 months' imprisonment, those terms to run concurrently. The judge ordered under section 240 of the Criminal Justice Act 2003 that 196 days spent in custody on remand should count towards that sentence.

3 The underlying facts are that on 30th November 2011, at about midday, the appellant, who lived in Strood in Kent, drove an Audi motorcar containing two female passengers towards Tunbridge Wells. En route they stopped at Eden-bridge where the two female passengers engaged in a shoplifting expedition at Boots the Chemist. The appellant also entered Boots briefly, but then returned to his car. When the two women left Boots the Chemist, they were followed by a female member of staff who believed that they had stolen cosmetics. One of the women appeared to place items into the boot of the Audi.

4 The latter events were observed by an off-duty police officer, Stewart Ballard. The member of staff explained her suspicions and as a result Mr Ballard ap-proached the front of the appellant's vehicle. He then took possession of her

personal radio, having confirmed that he had identified the correct car, and returned to the car in order to prevent it leaving. By that time the appellant had regained the driving seat, the boot had been closed and the female passengers had resumed their positions. Mr Ballard confronted the appellant by saying: "I want to have a word with you", at which point the car shot forward and Police Constable Ballard was thrown onto the bonnet. He then rolled onto the ground in front of the vehicle, hitting his head. The appellant then drove out of the parking bay and in so doing drove over Mr Ballard's legs.

5 He continued at speed without stopping, ignoring a traffic light which was red against him, and drove towards Tunbridge Wells on country roads. The police had been alerted and officers travelling in the opposite direction estimated that the appellant was driving at about 60 mph. They activated blue flashing lights and sirens on their motor vehicles and used them to block the carriageway. When the appellant was at a distance of approximately 200 metres, rather than slowing down to a stop he aimed his car at the middle of the road and in effect accelerated towards the police cars, one of which was required to retreat in order to avoid a collision.

6 Not long afterwards the two females left the appellant's vehicle. He continued on his way but when confronted by a further police vehicle he stopped and was arrested. Some of the stolen items remained in the car, others had been removed by the women when they left and yet further items had been thrown from the car.

7 The women were sentenced to terms of four months' imprisonment for the offence of theft. The appellant faced no conviction in respect of that aspect of the events of the afternoon.

8 The victim, Mr Ballard, was taken to hospital where he was found to have suffered a fracture of his tibia and fibular on the left side and a laceration to his head. The fractures were such that pins were required to fix them. Those pins required removal at a later stage. In a victim impact statement, dated 26th January 2012, Mr Ballard spoke of his concerns about pain management, the risk of infection and the need to have the pins removed. His activities had been severely impaired at least for the time being and he depended upon crutches. By the time of the sentence hearing he had returned to work but was on restricted duties. He continued to suffer some aching in the leg.

9 The written basis of plea, which was tendered to the court and accepted at the time of the Goodyear hearing, was in the following terms:

> "• D was aware that the two females had been up to no good
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> • He was aware that a man was seeking to detain them and was in front of the car
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> • In his anxiety to get away, he drove forward, perhaps hoping that the

man would get out of the way (this was a forlorn hope)

• He knew that he had knocked the man over but adhered to his plan of escape

• Whether he momentarily paused or reversed fractionally is not disputed; in further driving, he drove over the leg of Ballard

• In the heat of the moment, D's thoughts were not of causing really serious harm to any individual because his thoughts were only with himself and escaping, irrespective of the consequences; but the continuing to drive off incorporates the obvious reality that really serious harm was close to an inevitability."

Mr Hutchings rightly points out that the sentencing guideline on assault does not cover the intent specified in the offence charged on the present occasion. It provides guidance for offences involving intent to do grievous bodily harm. We note that for an offence in category one, that is greater harm and higher culpability, the recommended starting point is 12 years' custody, while for an offence in category two, which includes greater harm and lower culpability, the recommended starting point is six years' custody. Mr Hutchings concedes that the sentencing judge, as he indicated he would, was entitled to consider the sentencing guideline on section 18 offences even though it was not directly applicable.

10 Mitigation advanced on behalf of the appellant included that he had pleaded guilty, that there was no specific intent to cause grievous bodily harm, that the appellant had made real efforts in custody "to turn his life around" and that he had no previous convictions for violence.

11 As to his previous convictions, the appellant had 20 previous convictions for 38 offences including sexual offences, fraud, theft and supplying drugs. His last sentence of imprisonment had been imposed in 2003 for a period of five years.

12 The author of the pre-sentence report noted that the appellant had minimised his responsibility by claiming that the police and the CPS had set him up with a charge under section 18 . He suggested that if the victim had not been an off-duty police officer he would not have faced that charge. It was the opinion of the report writer that:

"Mr Talbot's thinking seems, at its core, to be very antisocial and in my view he appears very self-centred in his thinking and behaviour. The defendant has shown little regard for the victim or for the seriousness of his actions and seeks to minimise his behaviour at every opportunity …

Mr Talbot presents as an extremely anti-social and arrogant individual. During pre-sentence report interview he only wanted to focus on certain areas, including how well he feels he had done in his life in regards to

maintaining accommodation and employment. He spoke very rudely to me and refused altogether answering some of my questions and then himself questioned the reasons why I needed to interview him."

Another side of the appellant emerged while he was in custody awaiting sentence. He had impressed Temporary Senior Officer Emma Birch with his dedication and hard work. In her opinion, he was making every effort to address his offending behaviour while in prison.

13 The sentencing judge was provided with copies of a number of previous decisions of this court. Mr Hutchings recognises the limited value of fact-specific decisions, but we record them nonetheless: *R v Butler [2004] EWCA Crim. 2767, [2005] 1 Cr.App.R (S) 124* at page 712; *R v Fitzgerald [2005] EWCA Crim. 2301, [2006] 1 Cr.App.R (S) 86* ; *R v Huntroyd [2004] EWCA Crim. 2182, [2005] 1 Cr.App.R (S) 85* ; *R v Evans (Bradley) [2001] EWCA Crim. 2631, [2002] 2 Cr.App.R (S) 12* ; *R v Palliser [2005] EWCA Crim. 380* .

14 At the top of the bracket of sentences imposed was Butler . There the appellant had been convicted of attempting to cause grievous bodily harm with intent to cause grievous bodily harm. He drove away to resist arrest while the victim, a police officer, had his foot in the footwell of the car. He drove at speeds up to 70 mph and braked sharply. The officer was thrown off on to the road surface of the motorway. It is noteworthy that in this case the attempt to cause grievous bodily harm was an integral part of the dangerous driving. A sentence of ten years' imprisonment was described as "fully justified for a clear and deliberate attempt to cause serious injury to a police officer".

15 In Palliser , at the lower end of the bracket, the appellant drove his car at a victim with whom he had earlier a dispute in a nightclub. The victim suffered a broken leg. The appellant was a young man without this appellant's criminal record. He pleaded guilty but not at the first opportunity. A sentence of six years' imprisonment was reduced by this court to one of five years.

16 Mr Hutchings submits that had the learned sentencing judge paid proper regard to previous decisions of the court, he would have reached a sentence significantly lower than eight years' imprisonment. We have to ask ourselves the question whether the criminality revealed by the appellant's pleas of guilty to these two counts on the indictment rendered a starting point of 10 years' imprisonment manifestly excessive in the circumstances. First, we have considered the basis of plea. The appellant conceded that while his primary motive was to escape, the reality was obvious that really serious harm to the prone victim was close to an inevitability. The appellant's state of mind was in our view relevant to his culpability and therefore the seriousness of the offence. Had he been charged with murder and had the issue been intent, the judge would have directed the jury that it was open to them to find intent to cause really serious

harm, if they were sure that really serious harm was a virtually certain result of the appellant's actions and that the appellant knew that was the case. While there is a distinction between motive or objective and intent, it seems to us that in the present case the difference in culpability was paper thin. It was of course aggravated by the fact that he was attempting to escape lawful detention with two female passengers inside who he knew to have recently committed a comparatively minor offence. In our view, it was an aggravating factor that the appellant was attempting to escape lawful detention and well knew the serious consequences of driving over his victim's body. He had a bad criminal record and was quite unable to claim at the time of sentence that he felt real remorse for his actions. The consequences to his victim were serious and comparatively long term. The starting point was required to reflect not only the appellant's section 18 offence, but also the aggravating factor of his escape by aiming his car minutes later at police vehicles which sought to stop him.

17 As Mr Hutchings inevitably conceded, in passing concurrent sentences the learned judge was nevertheless required to reflect in the total sentence the criminality involved. Had not the police driver taken evasive action, the consequences of this incident would have been even more serious than eventually they were.

18 In our judgment neither the starting point of 10 years nor the resulting sentence of eight years' imprisonment can be described as manifestly excessive and for that reason the appeal must be dismissed.