Neutral Citation Number: [2018] EWCA Crim 2016

Case No: 201801880/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Date: Wednesday, 5 September, 2018

B e f o r e:

LORD JUSTICE McCOMBE

MR JUSTICE HOLGATE

MRS JUSTICE O'FARRELL DBE

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R E G I N A

v

NATHAN MONINGTON

- - - - - - - - - - - - - - - -

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Mr J Evans appeared on behalf of the **Appellant**

Miss C Wilks appeared on behalf of the **Crown**

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J U D G M E N T

MR JUSTICE HOLGATE: On 16 April 2018 in the Crown Court at Cardiff before His Honour Judge Bidder QC, the appellant pleaded guilty on re-arraignment to causing death by careless driving. There was no basis of plea. He was sentenced to 2 years' imprisonment and disqualified from driving for a total period of 5 years and until he passes an extended retest. He appeals against sentence with the leave of the single judge. Counts relating to causing death by driving whilst uninsured and unlicensed were ordered to lie on the file.

On 21 February 2017 the appellant was driving a Citroen Xsara motorcar. His friends Ryan Thomas and the late Thomas Cody were passengers. Mr Thomas was in the front passenger seat and Mr Cody was in the rear nearside seat. The group were travelling from Cardiff to shop in Llantrisant.

In Creigiau the appellant drove onto the A4119 westbound. The road was a single carriageway with one lane in each direction, separated by white central hazard lines and subject to a 60 mph speed restriction. The road surface was in a good state of repair and free from any relevant defects. The collision took place at about 7.40 pm. It was dark, but the road was illuminated. It had been raining heavily and the road was wet. The appellant drove through a series of sweeping bends before arriving at the bend where the collision took place. He was familiar with the road and knew of these bends. He lost control of the car, which crossed the opposite lane and hit a number of trees on an embankment sloping downwards from the road before coming to a halt.

The appellant and Mr Thomas were able to leave the car, but the rear nearside of the car had been severely damaged and Mr Cody lay inside, unconscious and severely injured. A passing doctor, Dr Ashley-Poon, and a member of the public performed CPR until the emergency services arrived. Unfortunately, he could not be saved and Mr Cody died at the scene, aged

24. He had sustained bilateral rib fractures and his left lung was penetrated. He suffered haemorrhaging in both chest cavities, probably as a result of damage to blood vessels in the left lung and the main vein in the right chest. Ryan Thomas sustained bruising, small cuts and a shoulder injury. The appellant suffered a fractured skull, but no brain injury or significant ongoing effects.

The appellant was arrested the following day. He admitted he had been the driver when the collision took place, but said he could not remember what had occurred or even driving on the A4119. His blood sample revealed prior use of cannabis but below the limit set by Parliament to define a driving offence and his breath test was negative for alcohol.

The vehicle was examined by the police who found no defects that would have contributed to the collision. The prosecution expert reported that the collision had occurred at a sweeping left bend in the road which then turned right before straightening out. The car left the road at a point immediately after the road began to bear right. It left the road on the offside and collided with a cluster of trees, causing it to rotate clockwise whilst sliding down the embankment. The rear nearside, where Mr Cody was sitting, collided with a substantial tree located adjacent to the offside edge of the carriageway. This impact then caused the car to spin anti-clockwise and become airborne, colliding with other trees before coming to rest at the bottom of the embankment. Most of the vehicle's panels were damaged in these collisions but by far the most significant was in the area of the rear nearside passenger door which had substantially intruded into the rear passenger area. The force of this impact tore the rear axle from its mountings and the nearside wheel and hub assembly had been bent inwards. All of this indicated a high-speed impact. There were no marks at or prior to the collision scene to indicate any form of emergency braking by the appellant.

The expert's conclusion was that the collision had been caused by the appellant driving at an

excessive speed so that he could not negotiate the bend safely. He said it was possible that in negotiating the left bend the appellant had lost control, or that he had entered the bend too fast and then braked or steered resulting in loss of control. He calculated the maximum speed at which a vehicle could negotiate the bend on the correct side of the road as being between 45.47 and 57.96 mph. The safe speed for negotiating the bend was calculated as 32.45 mph. He estimated that the car had been travelling at between 48.8 and 49.9 mph when it began to slide across the grass verge. He emphasised that that figure was an underestimate of the car's speed immediately prior to the collision because it did not take into account the impact of the vehicle with the trees.

The appellant had held a provisional driving licence since January 2008 and therefore would have had to be accompanied in the vehicle by someone who had passed their test. Neither Mr Cody nor Mr Thomas were drivers able to supervise the appellant. The vehicle was owned by Dean Mitchell who had been the registered owner since February 2017. It was described as a "pool car" shared by a number of young males.

We have read an eloquent and moving victim personal statement from the deceased's mother, Vicky Cody. She describes the devastating continuing impact of losing her son, known to all as Tom, on herself, family and friends.

The appellant was born on 6 June 1991 and was therefore aged 26 at sentence. He had three convictions between 2012 and 2015, namely battery for which he was fined in 2012, grievous bodily harm and harassment for which received a suspended sentence order in 2014, and grievous bodily harm and breach of that order for which he was sentenced to two years' imprisonment in 2015. He was recalled following the commission of the current offence and was released on licence in July 2017.

In the pre-sentence report the appellant accepted that he had not received any recent driving

tuition. He expressed deep regret for his actions and made no attempt to minimise his culpability. He was assessed as posing a low likelihood of reconviction and a medium risk of harm to the public. But the appellant's previous behaviour suggested that he may be inclined to behave recklessly, in an irresponsible and harmful manner.

In passing sentence, the judge stated that the fact that the appellant was uninsured and a provisional licence holder aggravated the offence of causing death by careless driving. Only the latter consideration was directly relevant in that the appellant's lack of tuition and experience had been an additional contributing factor. In the circumstances of this incident, and given that the appellant had been driving on a provisional licence without supervision, his inexperience could not be treated as a mitigating factor.

The appellant drove into the bend at a speed which was substantially too fast for the road conditions. He was unable to control the vehicle which slid off the road and collided with trees. Whilst there was no evidence of prolonged or persistent bad driving, and the appellant had not consumed intoxicants so as to be above the legal limit or to impair his driving, the speed at which he took the bend was "very obviously greatly excessive". Applying the Definitive Guideline: Causing Death by Driving, the judge found that this was a case which fell not far short of dangerous driving. For an adult first time offender convicted after a trial, the starting point was 15 months' imprisonment within a range of 36 weeks to 3 years' imprisonment.

There was another passenger in the car, but he did not suffer serious injury. The appellant suffered some, but not serious, injury. The judge accepted that the appellant had shown genuine remorse. He did not have any driving convictions, but did have a poor criminal record. He had not responded well to supervision in the community. He committed this offence whilst on licence having been released from a custodial sentence. As a result of his

arrest for this matter he was returned to custody. The aggravating feature of committing the offence on licence, however, should not be double-counted.

The appellant had not pleaded guilty at the earliest opportunity. The prosecution's expert report had been available in the court below, and once mechanical defect had been excluded, there was no defence to causing death by careless driving. However, the guilty plea had been indicated well in advance of trial and therefore credit of 20% for that plea was appropriate.

The judge said that the appropriate sentence before applying that credit was 30 months' imprisonment and so he imposed a sentence of 2 years' imprisonment.

Mr Evans in his helpful and well-presented submissions before us this morning submits on behalf of the appellant that the sentence imposed was manifestly excessive because the judge erred in treating the standard of the appellant's driving as falling not far short of dangerous driving. He submits that the case should have been treated as falling within the second category, "other cases of careless or inconsiderate driving". He submits there was no evidence to support the judge's categorisation of the offence. The applicant had simply misjudged a difficult bend and arguably there should have been a specific warning sign or reduction in the speed limit for that location. The appellant's actual speed was estimated to be about 10 mph below the actual speed limit and 8 mph below the top end of the range given for the maximum speed at which the bend could be driven.

Before dealing with the appeal, it is important that we should re-emphasise the role of the courts when sentencing in cases of this kind. No prison sentence that the Crown Court is able to impose, whatever its length, can sufficiently reflect the loss of someone's life. Instead, the role given to the court involves assessing the offender's culpability in committing the offence and the harm he has caused, applying the Definitive Guideline, and subject to the

maximum penalty which Parliament allows to be imposed. Sentencing for offences of this kind is highly sensitive to the circumstances of each individual case.

We reject the submission that the judge misapplied the Guideline. The fact that the speed at which the appellant was driving fell below the speed limit of 60 mph is of no consequence here. That limit did not indicate a level of speed at which it could not be careless, let alone safe, for the appellant to negotiate the bend, less still when it had been raining heavily and the road surface was wet. The appellant's culpability is not reduced because there was no warning sign about this bend or reduction in speed limit at that point. In any event, the road markings included the hazard lines. Furthermore, the collision took place after the appellant had driven through a series of bends. He knew of these bends and ought already to have been driving at an appropriate speed.

There is no merit in the argument that the appellant was only driving at 8 mph below the upper bound of the maximum speed assessed for the bend. It was careless verging on dangerous for the appellant, as an inexperienced driver, to be driving so close to this upper estimate of the *maximum* speed at which the bend could be taken in wet conditions. In any event, in our judgment, the argument is specious. This maximum speed was not a single estimated figure. Instead it was described as a range, the lower end of which was 45.47 mph. The appellant's argument ignores the fact that he drove at a speed which fell well inside that range and about 4 to 5 mph above the lower bound. For an inexperienced driver to drive at a maximum speed, or towards the very limit at which the bend could be negotiated in the wet, was undoubtedly careless driving falling not far short of dangerous driving. Furthermore, the prosecution expert explained that his assessment of the speed at which the car was travelling was in reality an underestimate.

It should be recalled that Annex A on page 18 of the Guideline gives driving at a speed "which is

highly inappropriate for the prevailing road or traffic conditions" as an example of dangerous driving, even where that driving is not "aggressive" and does not involve racing or "competitiveness". The difference between a "highly inappropriate" speed in this context and an "excessive speed" amounting to careless driving falling not far short of dangerous driving, is plainly a matter of degree. We are satisfied that the judge was fully justified in treating the excessive speed in this case as falling within the top category of carelessness. On that basis, his conclusion that the sentence would have been 30 months following conviction on a trial cannot be faulted and the sentence imposed of 2 years' imprisonment was not excessive. For all these reasons, the appeal is dismissed.

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