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No: 2018 03374 A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 4 December 2018

B e f o r e:

LORD JUSTICE DAVIS

MRS JUSTICE CUTTS DBE

HIS HONOUR JUDGE DEAN QC

(Sitting as a Judge of the CACD)

R E G I N A

v

RAVI RUPARELIA

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Mr William Clegg QC & Mr Quentin Hunt appeared on behalf of the **Applicant**

1. MRS JUSTICE CUTTS: On 4th May 2018, having pleaded guilty before the magistrates, this appellant was committed for sentence to the Crown Court, pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000, in respect of an offence of causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act of the same year. He was also committed to the Crown Court for sentence pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of the 'summary only' offence of failing to stop at the scene of an accident, contrary to section 170(4) and Schedule 2 of the same Acts.

2. On 6th August 2018, at the Crown Court at Southwark, the appellant was sentenced to 20 months' imprisonment for the offence of causing serious injury by dangerous driving and two months' imprisonment for the offence of failing to stop, to run consecutively with it, with a total loss of liberty, therefore, of 22 months. He was disqualified from driving for eighteen months, directed by the judge to begin "upon release from custody" and until an extended test had been passed. He was ordered to pay the victim of the offence £5,000 in compensation.

3. This application for leave to appeal sentence was referred to the Full Court by the Registrar. We have granted leave.

4. At around 7 am on Sunday 12th November 2017 police officers attended the junction between Marble Arch and Park Lane in London in relation to a road traffic collision in which a pedestrian had been injured. The victim, Anthony Davis, had been standing on one of the traffic islands on Park Lane waiting to cross the road. He heard the appellant's vehicle, a McClaren sports car, approaching but due to the speed at which it was travelling he decided not to cross the road, even though the pedestrian lights had changed to green. The appellant's vehicle then collided with a traffic light positioned on the same traffic island where Mr Davis was standing, causing it to fall on top of him. The appellant's vehicle continued and crashed through the barriers at Marble Arch. An off-duty

police officer spoke with the appellant and asked him to wait with his vehicle while he attended to Mr Davis. The appellant did not. He was captured on closed circuit television running in the direction of the Edgware Road.

5. Later that day he contacted the police to ask about his car. He was subsequently interviewed by the police on 22nd November 2017 and 30th January 2018. He made "no comment" to all questions asked of him.

6. Following the accident Mr Davis was taken to hospital, where he remained as an in-patient for seven days. He had sustained fractures to his leg.

7. In an impact statement dated 2nd December 2017 Mr Davis spoke of feeling angry, depressed and fed up. He was unable to leave the house for some time. He suffered flashbacks and nightmares, with an inability to sleep. He was also unable to work, which caused him serious financial loss of around £7,000. When he returned to work in April 2018, it was to a less well remunerated position.

8. The appellant was aged 30 years at the time of sentence. He had no previous convictions and a clean licence.

9. In mitigation the appellant relied on the following: his remorse, expressed in a letter to the judge and to the victim in the case and a large body of references attesting to his good character, in particular his charitable and community endeavours, including a mayoral commendation from the Mayor of Harrow dated May 2017. He also relied on evidence of his importance to the operation of his hotel and care home businesses which employ 2,500 people but which are said to be in a precarious financial position.

10. The judge also had the benefit of a psychiatric report dated 16th July 2018 which stated that the appellant was suffering from severe depression with an element of alcohol misuse. This had been diagnosed since the commission of the offences and since an attempt at suicide. He presented a moderate risk of suicide in July 2018, was not drinking alcohol at all and was completing a programme of cognitive behavioural therapy as a day patient.

11. We have seen reports from HMP Wandsworth where the appellant has been incarcerated since his sentence. It is plain that he has been using his time there to good effect, particularly in helping and mentoring others.

12. In his sentencing remarks the judge said that he could see no explanation for the collision, save that the CCTV showed the appellant's car travelling well in excess of the speed of other vehicles negotiating their way round Marble Arch. This was a case of excessive speed, in a car which the appellant was not properly trained or competent to drive. His speed was clearly inappropriate for the prevailing conditions: there was other traffic; it had been raining; and he made no allowance for the fact he was approaching a red traffic light. The judge found the fact that the appellant had run away rather than staying to assist the victim "frankly appalling".

13. The judge placed the offence of causing serious injury by dangerous driving between levels 1 and 2 of the relevant Sentencing Council guideline. He expressly took account of the appellant's mitigation, save that he found little weight in his depressive illness, which he attributed to the appellant's fear of imprisonment.

14. For the offence of causing serious injury by dangerous driving, he adopted a starting point after a trial of 30 months' imprisonment, reducing the term to 20 months by reason of full credit for the appellant's guilty plea. The judge described the failing to stop as "akin to an offence of perverting the course of justice", and adopted a starting point of four months' imprisonment, reduced to two months to accord with the principle of totality.

15. Initially the judge disqualified the appellant from driving for two-and-a-half years, until he passed an extended test. When prosecution counsel invited him to say that the disqualification should "be extended by the period the appellant is in prison" under section 35A of the Road Traffic Offenders Act, the judge understood her to be asking him to say that the disqualification should begin when the appellant was released from custody. Prosecution counsel confirmed that to be the case, whereupon the judge reduced the term to eighteen months "so as not to impinge upon the appellant's rehabilitation" and ordered the disqualification to begin upon his release.

16. In his grounds of appeal, enlarged upon by Mr Clegg QC, today the appellant submits that the sentence imposed is manifestly excessive for the following reasons:

17. (1) The judge wrongly assessed the offence as falling between levels 1 and 2 of the guidelines. It is argued that it properly fell within level 3 as driving which created a *significant* risk of danger, characterised by driving above the speed limit and at a speed that was inappropriate for the prevailing conditions.

18. (2) This led to too high a starting point.

19. (3) The judge placed too great an emphasis on the appellant's failure to stop and assist at the scene. The offence of failing to stop was dealt with by a separate consecutive custodial sentence and should not have been used as an aggravating factor in the sentence for causing serious injury by dangerous driving. It is an example of double counting. The guideline specifically excluded failing to assist as an aggravating factor.

20. (4) Insufficient credit was given for the fact that this was an isolated incident of dangerous driving in the context of the appellant's unblemished driving history.

21. (5) Insufficient credit was given for the appellant's personal positive good character and mitigation.

22. In our view this was a serious piece of dangerous driving. The appellant was

driving a high performance car, which he had only had in his possession for seven weeks, on a wet road in an area where there were likely to be pedestrians. It was incumbent upon him to take particular care in those circumstances, especially as he approached a pedestrian crossing. Instead, he drove too fast and lost control of the car at precisely the place where most care was needed. As a result Mr Davis was significantly injured in a way that will have on-going consequences. Even without being told to do so by an off-duty police officer the appellant should have remained at the scene. Instead, he ran; only later contacting the police to enquire about his car. In all of these circumstances a sentence of immediate imprisonment was plainly warranted.

23. That said, we are persuaded that the judge fell into error in placing the offence between levels 1 and 2 of the sentencing guidelines. It had many of the characteristics that are seen within level 3. We are also persuaded that there was a degree of double counting in the sentence imposed, in that the judge treated the failure to stop as an aggravating factor in the offence of causing serious injury by dangerous driving, but also ordered the sentence for it to run consecutively to the other sentence imposed. For these reasons we see force in the appellant's submissions that the judge adopted too high a starting point.

24. In our judgment, taking the appellant's mitigation into account and allowing full credit for his guilty plea at the earliest opportunity, the appropriate sentence for causing serious injury by dangerous driving is one of twelve months' imprisonment. We see nothing wrong with the term of two months' imprisonment for failing to stop running consecutively to that term. We give effect to this decision by quashing the sentence of 20 months' imprisonment for the causing serious injury by dangerous driving and substituting a sentence of twelve months' imprisonment in its place. The two months' imprisonment for the offence of failing to stop will remain consecutive to that term, resulting in a total sentence of fourteen months' imprisonment.

25. We turn to the question of disqualification from driving. As we have said, the judge disqualified the appellant for eighteen months. It is plain that the effect of section 35A and 35B of the Road Traffic Offenders Act 1988 and the judgment of this Court in *R v Needham & Others [2016] EWCA Crim 455* was misinterpreted by the parties and by the judge in the court below. The judge, who was given little assistance by counsel, erroneously pronounced that the appellant's disqualification would commence once he was released from custody. There is no power for the judge so to do. Further, section 34(4) and (4B) of the Road Traffic Act 1988 makes disqualification from driving for a period of not less than two years, in the absence of special reasons, obligatory for an offence of causing serious injury by dangerous driving. We correct the position. We consider that the appellant should be disqualified from driving for the obligatory two years for this offence. There will be an extension of a period of six months pursuant to section 35A of the Road Traffic Offenders Act, being half the term now imposed for the offence of causing serious injury by dangerous driving, and an uplift of one

month under section 35B to take into account the consecutive sentence imposed for the failing to stop. This amounts to a total disqualification from driving of two years and seven months and until an extended test is passed.

26. Whilst this makes the period of disqualification longer than that originally imposed, it does not offend against section 11(3) of the Criminal Appeal Act 1968 as we have reduced the substantive sentence of imprisonment. Taken as a whole, the appellant has not therefore been dealt with more severely than he was by the court below.

27. For these reasons, and to this extent, this appeal is allowed.