Regina v Mohammed Kahar

[2018] EWCA Crim 2522

Before: Mr Justice Holgate The Recorder of Preston His Honour Judge Mark Brown
(Sitting as a Judge of the CACD)

Friday, 2 November 2018

Representation

Miss S Etemadi appeared on behalf of the Appellant.

Judgment

Mr Justice Holgate:

1 On 28 June 2018 in the Crown Court at Snaresbrook, the appellant was convicted of dangerous driving contrary to section 2 of the Road Traffic Act 1988 . On 5 July 2018 he pleaded guilty to two summary offences: driving without a licence and driving without insurance. On the same day he was sentenced for the dangerous driving to 12 months' detention in a young offender institution. No separate penalties were imposed for the other offences. The court ordered disqualification for 18 months from 28 June 2018, the date when an interim disqualification order was imposed and continuing until the appellant passes an extended driving test. He appeals against sentence with the leave of the single judge. His application for leave to appeal against conviction was refused and has not been renewed.

2 At the outset of the hearing, it was drawn to the court's attention that the appellant has in fact been released on home detention curfew. The court has not been informed when that happened. Nonetheless, Miss Etemadi, to whom we are grateful for her submissions this morning, confirmed on behalf of the appellant that he wishes his appeal to continue and to be determined.

3 On 18 December 2017 at approximately 1am, police on a routine patrol in a marked car were given information about a stolen Volkswagen Golf car. They pulled up a white VW and asked the driver to stop to answer a few questions. Instead the driver, later identified as the appellant, drove off at high speed. He had neither a driving licence nor third party insurance. The officers put on blue lights and a siren and gave chase through residential streets which were subject to a 30-mile per hour speed limit. The effective width of these roads was reduced over many sections by parked vehicles, as can be seen from the video from the

dash cam in the police car, which we have watched. That same source shows the appellant travelling at speeds of between 70 to 80 miles per hour and overtaking other vehicles. Plainly the appellant was aware that he was being pursued by the police. At one point, in an attempt to get away, he made the car mount a pavement and sped along it between parked cars. He then drove on the wrong side of the road, travelling in head-on manner so as to cause cars coming from the opposite direction to have to avoid him. Indeed, a bus heading towards him had to take evasive action, something which the judge described as terrifying to see. The police followed the appellant until they lost sight of the car. They then drove around the area searching for him. When they found the car the appellant jumped out and ran off. More officers arrived to assist and the appellant was caught and arrested. The issue at trial was one of mistaken identity. The appellant sought to say that he had not been the driver of the car.

4 The appellant was born on 31 December 1998. He was almost 19 years old at the time of the offence and 19½ when convicted. He had no previous convictions. But four months after the index offence was committed, he was convicted of driving without a licence and whilst uninsured again.

5 In the pre-sentence report, the appellant maintained that the dangerous driving had been a case of mistaken identity and that he had only been a passenger in the car. When all the occupants ran off he had been unable to get away because he had been wearing a knee brace. The author of the report stated that there was a medium likelihood of the appellant being re-convicted. The report proposed a community order with an unpaid work requirement.

6 In passing sentence, the judge said that thankfully nobody had been injured by the appellant's persistent and dangerous conduct, but undoubtedly it must have been terrifying for the drivers of the oncoming cars to face the appellant's car on the wrong side of the road. She concluded that the offence did pass the custody threshold and that only an immediate custodial sentence would be appropriate. It was a persistent course of driving at excessive speeds through residential streets and driving head-on towards oncoming traffic. After taking the appellant's age and mitigation into account, the judge sentenced him to 12 months' detention.

7 In the grounds of appeal, it was submitted firstly, that the sentence ought to have been suspended given the appellant's personal mitigation, age, and case law on immaturity and the applicability of the youth sentencing guidelines. That particular aspect was not pursued by counsel for the appellant this morning.

8 Secondly, in the light of *R v O'Connor [2012] EWCA Crim 785* , it was submitted that the length of the sentence imposed was manifestly excessive given that there had been no serious aggravating features such as a collision and the appellant had not been under the influence of alcohol or drugs.

9 In *R v Clarke [2018] EWCA Crim. 185* , at paragraph 5, Lord Burnett of Maldon, LCJ, giving the judgment of the full court, re-emphasised the point that

attaining the age of 18 is not to be treated as a cliff-edge event for the purposes of sentencing. People mature beyond their 18th birthdays and at different rates. However, in this case the pre-sentence report did not suggest that the appellant was immature in relation to his age and there is no other evidence before the court to suggest otherwise. The judge, who of course had the advantage of seeing the appellant during the course of the trial, took into account his age as at the time of the offence.

10 Miss Etemadi referred the court not only to O'Connor but also Lauciskis [2015] EWCA Crim. 2185. We have also considered Kilara [2012] EWCA Crim. 2110 to which the single judge referred. We bear in mind that none of these decisions were guideline cases and should not be treated as such. It is often said by this court that it is inappropriate for detailed comparisons to be made between such decisions and the appeal before the court. Such decisions turn on their own facts.

11 However, in Kilara this court stated that the range for a single offence of the kind involved there is well-settled, namely three to 12 months after a trial. In that case the offender had driven along residential roads at speeds over 50 mph where the speed limit was 30 mph. No alcohol was involved, no collision or damage occurred. The car was insured and the offender had a licence. Nonetheless, the court stated that a starting point of 12 months' imprisonment for an adult would have been appropriate.

12 In the present case, there was a prolonged, persistent and deliberate course of very bad driving in a residential area at speeds approaching 80 mph on roads where traffic is restricted to 30 mph. Although no collision took place and no damage was caused, the appellant either chose to ignore or showed a flagrant disregard for the rules of the road and an apparent disregard for the great danger he posed to the other road users on the highway. This is made plain by the particularly high speeds at which the car was driven and the various unlawful and dangerous manoeuvres he performed which we have summarised. The appellant drove in this manner in an attempt to escape from the police whom he knew to be chasing him over a substantial period of time. Twice when he was stopped by the police he tried to get away. His offending was further aggravated by the lack of a licence and insurance. The sentence imposed by the judge for someone aged 19 who had never been in trouble before, let alone detained, might perhaps be considered to be severe. But the driving was so dangerous and so sustained in duration that we do not consider that the sentence imposed was manifestly excessive. Likewise, the offence was so serious that there was no justification for the sentence to be suspended. For these reasons, the appeal is dismissed.

13 However, there is one further matter with which we should deal and that concerns the correct form in which the disqualification should have been expressed having regard to the decision of this court in *R v Needham [2016] EWCA*

Crim. 455 . The order of the Crown Court must be corrected so that it refers to disqualification firstly for the mandatory period of 12 months from the date on which the interim order was made, namely 28 June 2018, and in addition a further period of disqualification for six months pursuant to section 35A of the 1988 Act. Beyond that, the Appellant may not drive until he passes an extended driving test.