

Neutral Citation Number: [2019] EWCA Crim 356

No. 2019/00562/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Wednesday 27th February 2019

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(The Lord Burnett of Maldon)

MRS JUSTICE WHIPPLE DBE

and

MRS JUSTICE FARBEY DBE

R E G I N A

- v -

MICHAEL TWIZELL

Computer Aided Transcript of Epiq Europe Ltd, 165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to
the Court)

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.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Ms S Barlow appeared on behalf of the Applicant

J U D G M E N T

(Approved)

Wednesday 27th February 2019

THE LORD CHIEF JUSTICE: I shall ask Mrs Justice Farbey to give the judgment of the court.

MRS JUSTICE FARBEY:

1. On 21st January 2019, on what was to have been the first day of his trial, the applicant pleaded guilty in the Crown Court at York to one count of doing an act

intending and intended to pervert the course of public justice. On 11th February 2019 he was sentenced by His Honour Judge Hickey to three months' imprisonment. This application for leave to appeal against sentence has been referred to the full court by the Registrar.

2. The facts may be briefly stated. On 15th February 2018 a civilian traffic officer was on duty on the A658, on the outskirts of Harrogate, deploying a speed detection device to check the speed of passing vehicles. The applicant was driving his car. The officer attempted to use the device to assess the applicant's speed, but the first three readings failed. On the fourth attempt, a speed of 21mph was recorded. We note that there was no evidence that the applicant had been driving in excess of the speed limit.

3. The traffic officer suspected that the vehicle had been fitted with a laser-jamming device. On 25th February 2018, a police officer went to the applicant's home and examined the car. He noticed a black box which had been fitted underneath the registration plate. Under caution, the applicant said that it was a parking sensor. He maintained that account when he was subsequently interviewed.

6. In passing sentence, the judge rightly commented that the police operate such devices to protect the public from the dangers caused by drivers who exceed the speed limit. He concluded that the applicant was trying to avoid, either at the time of the offence or at some other time, being caught speeding on public roads for which he could have been prosecuted. He noted that the applicant had incurred three penalty points for speeding as recently as 2017.

7. On the other side of the scales, the judge described the applicant as a 58 year old man of impeccable character who has never troubled the law in the past. He took into consideration the character references taken from the applicant's family and friends as being powerful mitigation. He expressed the view that the applicant is unlikely to offend again in the future. The applicant's charity work was also to his credit.

8. Imposing an immediate custodial sentence, the judge remarked that the offence was a serious one and that the sentence should have a deterrent element. He would have imposed four months' immediate custody after a trial. Taking account of all the personal mitigation and applying a ten per cent discount for the late guilty plea, he reduced the sentence to three months' imprisonment.

9. In her written grounds of appeal, which have been elaborated orally this morning, Ms Barlow submits that the sentence was manifestly excessive and that the exceptional circumstances ought to have led to a suspended sentence order. The effects of the applicant's offending were limited because the indictment period was restricted to the use of the equipment on one day and because there was no evidence that the applicant was speeding or otherwise driving poorly. She also submits that the judge was wrong to impose a deterrent element when there was no evidence that the use of laser-jammers is a persistent or a prolific problem, whether nationally or locally.

10. We have no hesitation in saying that the use of such jamming devices will amount to a serious offence, whether or not accompanied by other bad driving. These devices prevent the police from detecting crime and hinder the important role of the police in keeping road users safe. The judge was, in our view, entitled to conclude that the custody threshold was met. We do not regard the judge's reference to deterrence as going further than laying down a marker that the court will treat as serious those offences which seek to undermine the processes of justice, even where an offender has no previous convictions.

11. However, it is notable that the judge did not apply the definitive guideline on the imposition of community and custodial sentences. We have taken into account the factors under the guideline which should be weighed in considering whether it is possible to suspend the sentence. We are persuaded that an immediate sentence of three months' imprisonment, after a guilty plea, was manifestly excessive in light of the strong personal mitigation advanced to the judge and we take the view that this is not a case where appropriate punishment can only be achieved by immediate custody.

12. Were it not for the fact that the applicant has spent around sixteen days in custody, we would have imposed a suspended sentence order with a curfew and a fine. Given, however, that the applicant has served sixteen days in prison, we will order the sentence to be suspended without other requirements or a fine.

13. We shall, therefore, grant leave. We will quash the sentence of three months' immediate imprisonment and substitute for it a sentence of three months' imprisonment suspended for two years.

14. To this extent the appeal is allowed.
