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No. 2019/01135/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Friday 10th May 2019

B e f o r e:

MRS JUSTICE SIMLER DBE

and

THE RECORDER OF LONDON

His Honour Judge Hilliard QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

PETER KABIRIA

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Miss Gordana Turudija-Austin appeared on behalf of the Appellant

J U D G M E N T

(Approved)

Friday 10th May 2019

MRS JUSTICE SIMLER:

Introduction

1. On 27 December 2018, having pleaded guilty before a magistrates' court to an offence of dangerous driving, contrary to section 2 of the Road Traffic Act 1988, and to offences of using a motor vehicle on the road without third party insurance and driving otherwise than in accordance with a driving licence, the appellant was committed for sentence to the Crown Court.

2. On 1 March 2019, in the Crown Court at Oxford, he was sentenced by Mrs Recorder Campbell to six months' detention in a young offender institution for the offence of dangerous driving. No separate penalty was imposed in respect of the offences of driving without insurance and driving without a licence, although his licence was appropriately endorsed, and he is disqualified from driving for a period of five years and until an extended driving test is passed. The disqualification period was subsequently amended following an indication by the Registrar of Criminal Appeals that an additional period to reflect the sentence of detention was required. As a consequence, the disqualification period was increased to five years and three months. The appellant was also ordered to pay the victim surcharge.

3. The appellant now appeals against sentence by leave of the single judge.

The facts

4. The facts are these. On 15 August 2018, at about 3.30pm, the appellant was driving an Audi Quattro motor car towards Oxford City Centre. His car attracted the attention of police as a result of automatic number plate recognition cameras suggesting that it bore cloned number plates. Officers in a marked police vehicle followed his car. They held back, not wishing to trigger a reaction that might lead to dangerous driving. A police air force helicopter was alerted and other police in the neighbourhood were also alerted. As the appellant's vehicle pulled out, it sped off. The officers in the marked police car following it lost sight of it. Officers in another police car located the appellant's vehicle and the marked police car eventually caught up with it in traffic and pulled up next to it.

5. Far from appreciating that the vehicle with illuminated blue lights was a warning to stop, the appellant instead caused his vehicle to reverse back, narrowly missing a car driving behind him. It then moved forward and mounted the pavement in Old Road, Oxford near to a bus stop. It was driven along the pavement at speed. It was not driven at members of the public, but certainly there were members of the public on the pavement who were forced to get out of the way. One of the police officers described the learner driver in the motor car behind the appellant when he reversed as looking petrified because he thought that his vehicle was about to hit by the appellant's vehicle. Police officers decided not to give chase because of the risk of harm to the public.

6. The appellant's vehicle stayed on the pavement for a distance, trying to undercut traffic to get past. It then came off the pavement, narrowly avoiding another vehicle as it turned into Woodford Lane. The vehicle headed towards Cowley Road and was spotted by officers in another police vehicle. At one stage it went through a red traffic light. It was driven at excessive speeds: 70mph in a 50mph area, and 50mph in a 20mph area. Eventually, it was parked up. At that point far from accepting what he had done, the appellant ran into the Tesco store on Cowley Road, where he sought to evade arrest by mingling with shoppers in the store. He left through the rear of the store, where he was pursued on foot by officers and eventually detained.

7. It was subsequently confirmed that the Audi Quattro had been stolen from a house burglary in Essex.

8. In interview the appellant said that he had never driven the vehicle before; someone had lent it to him; he did not know it was stolen. He answered "no comment" to all questions about his driving.

9. The appellant is now aged 19. At the time of the offences he held a provisional driving licence, but had never held a full driving licence, and he was, as we have already indicated, uninsured. He was of previous good character and had no motoring offences on his record.

10. A short-form pre-sentence report was prepared for the sentencing hearing. The appellant was then unemployed but assisted his mother with her caring job. He had previously attended Oxford College playing

football, but had been injured as a result of which his father did not want him to continue and so he stopped attending there. He was assessed as at low risk of re-offending; but given the manner of his driving, which could have caused serious harm, he was assessed by the author of the report as posing a medium risk of harm to the public. The author assessed him as suitable for a community sentence, with a requirement to complete work on the impact of offending and how to avoid further offending, if the court felt able to pass a community sentence in this case. He was assessed as vulnerable in custody.

11. On the appellant's behalf, Miss Turudija-Austin of counsel advanced a number of points in mitigation of sentence. She points out that, bad though the dangerous driving was, it lacked some of the aggravating features found in other cases. It was not, for example, a case of a driver intoxicated with alcohol or drugs; no harm was caused; and no damage was done to other people or vehicles. The appellant accepted responsibility, expressed remorse and pleaded guilty at the earliest opportunity. He had borrowed the car and when the police car pulled alongside him, he panicked as he knew that he did not have a licence. He knew that he had made a mistake and he regretted it. He was 18 years old at the time and of previous good character. He had obtained a provisional driving licence in early 2018 and was taking driving lessons and should be given an opportunity to re-evaluate his thinking and his attitudes in the programme recommended by the Probation Service.

12. In her sentencing remarks, the Recorder referred to the appellant's driving as "so dangerous and so bad". She observed that it was by luck and chance that nobody was severely injured or killed by his driving that day. She referred to the features of the dangerous driving which we have already summarised. Although she did not say so, it seems to us that by passing no separate penalty in respect of the insurance and licence offences, she treated them as aggravating features of the dangerous driving charge. She took a notional sentence after trial for a more mature adult of fifteen months' custody and, giving full credit for the guilty pleas, reduced that to ten months and then reduced it further to reflect the appellant's mitigation and his immaturity and thus imposed a sentence of six months' detention. She observed that, given the nature of the driving, it was not appropriate for that sentence to be suspended. She also imposed the period of disqualification to which we have referred.

The appeal

13. Miss Turudija-Austin advances three principal grounds of appeal. First, she submits that the Recorder erred in taking too high a starting point for the immediate custodial sentence that was passed in this case. Secondly, she erred in failing to adopt the recommendations put forward by the author of the pre-sentence report. Thirdly, and in any event, she submits that the period of discretionary disqualification imposed by the Recorder was simply too long. We are grateful to counsel for her focused submissions.

14. There is no definitive sentencing guideline for sentences imposed in the Crown Court for offences of dangerous driving. In dealing with this appeal it is therefore necessary for us to focus on the features of culpability and harm which are present in this case in order to assess whether the immediate custodial sentence was a proper one.

15. This was a bad case of dangerous driving which took place over a period of approximately fifteen minutes. The driving continued in a dangerous manner at high speeds, including travelling on the pavement for a significant distance, driving through a red traffic light, and reversing in such a way as to come close to colliding with another vehicle. There was an obvious risk of injury to others, both pedestrians who had to get out of the way and other drivers. The Recorder was entitled to regard as serious aggravating features the fact that the appellant had no full driving licence and no insurance features thereby increasing the sentence on the dangerous driving offence.

16. Against those matters it was necessary for the Recorder to take into account the fact that no one was in fact injured, no damage was caused and, significantly, the appellant was relatively young and had no previous convictions. The Recorder correctly gave full credit for the guilty pleas entered.

17. Given that the maximum sentence for the offence of dangerous driving is one of two years' imprisonment, there is a comparatively broad band of conduct which represents the most serious offending within the ambit of this offence and which therefore justifies a sentence after trial at or near the statutory maximum. Here, it is clear that the Recorder did not take a sentence after trial that was at or near the maximum. She took a sentence of 15 months' custody for a mature adult before reducing that to reflect the appellant's personal circumstances and mitigation.

18. Although it seems to us that the Recorder ought properly to have reduced the notional sentence of 15 months to reflect age before she gave credit for the guilty pleas, the resultant sentence of six months' detention was, in our judgment, neither wrong in principle nor manifestly excessive. It seems to us, notwithstanding the mitigation available, that the Recorder was amply entitled to conclude that this dangerous driving justified an immediate sentence of six months' detention and that appropriate punishment could only be achieved in that way.

19. We do consider, however, that there is greater force in the challenge to the discretionary disqualification period. The appellant has no previous convictions and no record of bad driving. He will be required to take and pass an extended driving test before he can drive lawfully in the future. In the circumstances, we accept that the discretionary period of disqualification was significantly longer than was necessary and proportionate.

20. We therefore allow the appeal to the following limited extent. We quash the period of disqualification imposed below and for it we substitute a period of 21 months, comprising a discretionary period of 18 months and an extension period of three months, pursuant to section 35 of the Road Traffic Offenders Act 1988. That reduced period of disqualification will run, as before, from 27 December 2018 and, as before, the appellant will be required to take and pass an extended driving test.

21. To that extent only the appeal succeeds, but the sentence of detention remains unaltered.

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