

Regina
v
Miguel Rahiece Cunningham

Court of Appeal Criminal Division

[2019] EWCA Crim 956

Before: Mr Justice Jeremy Baker and Sir Kenneth Parker

Wednesday 15th May 2019

Representation

Mr A Wright appeared on behalf of the Appellant.

Judgment

Wednesday 15th May 2019

Mr Justice Jeremy Baker:

I shall ask Sir Kenneth Parker to give the judgment of the court.

Sir Kenneth Parker:

1. On 24th January 2019, in the Crown Court at Wolverhampton before His Honour Judge Berlin, the appellant pleaded guilty to aggravated vehicle taking, contrary to section 12A of the Theft Act 1968 . He was sentenced to one year and four months' imprisonment for that offence. No separate penalty was imposed in relation to a summary offence of using a vehicle without insurance, contrary to section 143 of the Road Traffic Act 1988 . The total sentence, therefore, was one year and four months' imprisonment. The appellant was also disqualified from driving for five years and eight months and until an extended re-test was passed.

2. He appeals against sentence by leave of the single judge.

3. The facts were as follows. A Range Rover motor vehicle had been stolen on 21st December 2018 from outside its owner's address in Smethwick, West Midlands. The Range Rover was subsequently seen by police officers on 26th December 2018 travelling in the opposite direction to them, and the registration number of the vehicle indicated that it was a 2012 registration when in fact, the vehicle's true registration was 2015. The police officers took the decision to turn around and follow the vehicle as they had noticed that the driver's side window was broken. On following it, the police officers saw the Range Rover overtake a vehicle in front and then set off, initially at a reasonable speed. The officers then pursued the vehicle for around twelve minutes through both industrial and residential areas at speeds ranging from 20mph and the high end of 60mph. The appellant drove through three red traffic signals during the chase, drove on the wrong side of the road and overtook stationary vehicles that had been waiting at a set of traffic lights. The appellant subsequently leapt from the Range Rover

as it was still moving and made off. The Range Rover thereafter collided with a bus shelter. The appellant was eventually detained with the assistance of other police officers and arrested.

4. In interview, having watched the CCTV footage that had been captured by the police car, the appellant accepted that his driving had been dangerous, but he asserted that he did not know that the Range Rover had been stolen.

5. In sentencing, the judge remarked that the appellant was 20 years of age and had a very bad criminal record, although not a lengthy record. He had previously received a three year custodial sentence for drug offences and had been recalled on licence when arrested for the index offence. The judge had to deal with the appellant for a single offence of aggravated vehicle taking which had been an “absolutely shocking piece of driving in a stolen car”. The judge accepted that the appellant did not steal the vehicle himself but that he had known that it was stolen. The Range Rover was a large and powerful vehicle and it had been driven on roads where 30mph speed limits would have been in place. The appellant had driven the vehicle at speeds of up to 60mph to 70mph which the judge had seen on the CCTV footage. The appellant had cut through junctions without stopping and had gone around bollards the wrong way. Other cars had to swerve in order to avoid the vehicle which the appellant had been driving. The offending had taken place at midday on Boxing Day. There had been quite a lot of traffic on the roads, although not a great number of pedestrians had been around. The appellant had then jumped out of the vehicle whilst it had still been moving and it had ploughed into a bus shelter. Nobody had been at the bus shelter, but the appellant would not necessarily have known that at the time.

6. The judge further remarked that the index offence had been at the top end of such offending. The maximum sentence was two years’ custody. The judge’s starting point was one of 22 months’ custody, which was reduced to take account of the appellant’s age and perhaps lack of maturity. The sentence was reduced again to take account of the appellant’s plea of guilty and he was given credit of slightly more than 25 per cent to take account of that plea. That brought the sentence down to one of sixteen months’ custody, which was the sentence that the judge passed. The appellant was disqualified from driving for a period of five years and eight months. No separate penalty was imposed in relation to the summary only offence, and his licence was endorsed.

7. Mr Wright, in helpful submissions advanced on behalf of the appellant, submitted that the sentence of sixteen months’ custody, even with the credit for a guilty plea, was manifestly excessive as the appellant had no previous convictions for aggravated vehicle taking or dangerous driving. Before us today, Mr Wright stressed the fact that the appellant had no previous convictions in relation to any driving offences and that that had not been reflected in the high sentence that had been taken. Mr Wright also pointed out that the appellant had not been the individual who had taken the vehicle - in other words, stolen it - but, nonetheless, as the judge recorded, the appellant well knew that the vehicle was stolen.

8. Mr Wright also pointed out that at the time of the offence the appellant (who is now aged 21) was 20 years old and that more credit should have been given for his youth and immaturity. Mr Wright also drew attention to the fact that no injuries had been caused to any persons. However, we would observe that that appears to be entirely fortuitous, having regard to the nature of the driving that has been set out in our recital of the facts and in our summary of the judge’s own observations. It is clear that other vehicles - and indeed pedestrians insofar as they were present - would have been put at risk. In addition, there was the final damage to the bus shelter. Again, fortuitously, there were no individual pedestrians at the bus shelter which was struck.

9. We do not agree that the starting point taken by the judge of 22 months was in all the circumstances

excessive. It is clear from all that has been said that this was indeed a “shocking piece of driving” (as the judge put it) which put at risk other road users. As already recounted, it was fortuitous that no injuries or greater damage was caused by this truly appalling episode of bad driving. The offence was committed when the appellant was on licence for other serious offences, albeit they were not driving-related offences.

10. Having regard to the high culpability of this episode of driving, it appears to us that the learned judge was right to take the starting point that he did of 22 months which reflected sufficiently the individual characteristics of the appellant upon which Mr Wright has strongly relied. Therefore, although this sentence might be described as severe, we do not consider that it can properly be characterised as manifestly excessive.

11. The second aspect of the appeal relates to the period of five years’ disqualification. Mr Wright submits that such disqualification will have potentially a considerable effect on the appellant when he is released from custody and therefore the court should be cautious in imposing such a long period of disqualification. He relied again on the factors that have already been mentioned in relation to the appellant’s personal circumstances when submitting that the custodial period was excessive. He points out in particular that there was no history of previous driving offences, nor is there any history of breach of any period of disqualification earlier imposed.

12. We see greater force in the submissions relating to the period of disqualification. We consider that, having regard to the offending and the features we have mentioned and upon which Mr Wright has relied, the five year period was indeed excessive and that a period of three years’ disqualification would have been appropriate in this case.

13. As a result, the total period of disqualification will need to be adjusted to reflect the appropriate applicable legislation. The total period of disqualification will be the three years that has been referred to, and then there is the additional eight months under section 35A of the Road Traffic Offenders Act 1988 , giving a total period of disqualification of three years and eight months, which must be substituted for the period of five years and eight months.

14. For those reasons the appeal is allowed in relation to the period of disqualification, but is dismissed in relation to the custodial sentence.

15. Finally, the judge apparently pronounced that this was a sentence of imprisonment. The imposition of such a sentence is impermissible under section 89 of the Powers of Criminal Courts (Sentencing) Act 2000 for a person under the age of 21. It is unfortunate that the judge pronounced the sentence in those terms. We should make it clear in this court that, having regard to the age of the appellant, the appropriate sentence should have been one year and four months’ detention in a young offender institution.