

[2019] EWCA Crim 1463

2018/03671/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 20th June 2019

B e f o r e:

LORD JUSTICE HAMBLÉN

MR JUSTICE LEWIS

and

HIS HONOUR JUDGE PICTON

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

R E G I N A

- v -

LUKE CHRISTOPHER HICKMAN

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Mr S Stirling appeared on behalf of the Appellant

Mr R Price appeared on behalf of the Crown

J U D G M E N T

(As Approved)

Thursday 20th June 2019

LORD JUSTICE HAMBLÉN: I shall ask Mr Justice Lewis to give the judgment of the court.

MR JUSTICE LEWIS:

1. On 14th August 2018, in the Crown Court at Wolverhampton, the appellant, Luke Hickman, who is now 20 years old, was sentenced for a number of offences. First, he was sentenced to six years and eight months'

detention in a young offender institution for causing death by dangerous driving, and was disqualified from driving for six years, with a three year and eleven month extension period and a requirement to take an extended re-test. Secondly, he was sentenced to six months' detention, to be served consecutively, for conspiracy to pervert the course of justice. Thirdly, he was sentenced to eight months' detention, to be served consecutively, for a subsequent offence of dangerous driving, and was disqualified from driving for three years. Fourthly, he was sentenced to four months' detention, to be served concurrently, for driving whilst over the permitted alcohol limit, and disqualified from driving for one year. No separate penalty was imposed in respect of three other driving offences, but the appellant was disqualified from driving for one year concurrently in respect of each offence. The total sentence, therefore, was one of seven years and ten months' detention in a young offender institution, six years' disqualification from driving, with an extension period of three years and eleven months, and a requirement to take an extended re-test.

2. The appellant appeals against sentence by leave of the full court granted on 22nd Marc 2019.

3. The most serious offence was that of causing death by dangerous driving. On 3rd January 2017, Ellie Underwood died at the Queen Elizabeth Hospital in Birmingham. She died as a result of catastrophic head injuries suffered as a result of being thrown from the bonnet of a car being driving by the appellant, who was her friend.

4. The facts, in brief, are these. Ellie, the appellant and two other friends had been for a meal on Boxing Day 2016 to celebrate a birthday. They drove to a car park at a local Tesco's. The appellant was driving. He had not passed his driving test and had only a provisional licence. At one stage, he drove his car around the car park with one of his friends seated on the bonnet. Ellie then sat on the bonnet with her back to the windscreen. The appellant drove the car around the car park with Ellie sitting on the bonnet and then paused. He then drove around the car park for a second time, with Ellie still on the bonnet, this time at greater speed. As he braked and turned sharp left, Ellie fell from the bonnet and struck her head on the hard surface, causing fractures to her skull and brain damage. The appellant drove the car at times at about 25mph. At the time that Ellie fell from the bonnet of the car, he was driving at about 15mph.

5. Neither the appellant nor his friends called an ambulance. The driver of another car stopped to offer assistance. He asked if he should call an ambulance. The appellant said "No". The appellant and his friends put the unconscious body of Ellie into the back of their car. They drove to a McDonald's restaurant where they obtained tissues to try to wipe away the blood. Eventually, someone told them to take Ellie to hospital, which they did.

6. At the hospital they did not tell the medical staff the truth about how Ellie had sustained her injuries. The delay in taking Ellie to hospital and the lies to the medical staff did not ultimately affect the outcome. The catastrophic injuries to Ellie would have proved fatal in any event, although the appellant was not to know that at the time.

7. The appellant and his two friends went to the home of Ellie's family where again they lied about Ellie how had sustained her injuries and how serious they were. They persisted in their lies about how the injuries had occurred for some days. All that must have caused an already distraught family even further distress. The family had the trauma of Ellie lying in a coma to deal with, whilst being told lies and then hearing rumours about what had actually happened to their daughter. The truth finally emerged after Ellie died on 3rd January 2017.

8. Ellie was just 20 years old when she lost her life. That tragedy has had a profound and devastating impact on her family. We have read the victim impact statement of her mother, Dawn Underhill, and the statement made by her mother at the time of the last hearing in this court. The statements explain in moving terms the effect of Ellie's death on her family. Nothing this court does can ever begin to make up for the loss of a young life. No sentence can ever reflect the value of the person's life, or fill the void left in the lives of the family affected by this tragedy.

9. The offence of dangerous driving and the other driving offences occurred some months later. The appellant drove dangerously, when unlicensed and uninsured, and whilst over the legal alcohol limit for driving. He realised that the police wished to stop him. He took a conscious decision to try to get away. A police pursuit ensued. The appellant drove at speeds of up to 60mph. He lost control of the car. It mounted the central reservation and then continued on the wrong side of the road. The appellant eventually abandoned the vehicle, but he was caught.

10. At the time of these offences the appellant was aged 18. He was 19 at the date of sentence. He had no previous convictions.

11. There was a pre-sentence report which said that the appellant appeared to be an immature young man who did not appreciate the very serious nature of these offences. The author of the report said that whilst the appellant had stated that he felt remorse, his overall demeanour in interview did not reflect this. He demonstrated a lack of insight into the offences and that gave rise to concern about the future risk of him indulging in selfish and irresponsible behaviour if at the wheel of a car.

12. In his sentencing remarks the judge placed the offence of causing death by dangerous driving at level 1 (the highest level) in the relevant Sentencing Council guidelines. The judge said that the appellant had driven with someone on the bonnet of his car for a significant distance at a speed which, in the circumstances, was grossly excessive. He had failed to have any proper regard for the safety of Ellie, who was in a highly vulnerable position on the bonnet of the car. The judge said that he would reduce the appropriate sentence by one-third to reflect the fact that the appellant had indicated that he would plead guilty at the earliest opportunity. The judge was obliged to follow the Sentencing Council guidelines, which requires a reduction in sentence of one-third in such cases.

13. The judge imposed a sentence of six years and ten months' detention. That indicates that the judge considered that a sentence of ten years' detention was appropriate before the reduction for the guilty plea. He also disqualified the appellant from driving, as we have described.

14. In relation to the conspiracy to pervert the course of justice, the judge referred to the lies told to Ellie's family and how that caused them additional agony and distress. He described the behaviour as persistent, with a clear intention of covering up a serious crime. He said that the sentence had to reflect an element of deterrence. He therefore imposed a sentence of six months' detention, to be served consecutively.

15. In relation to the subsequent offence of dangerous driving, the judge said that the appellant had made a conscious decision to try to escape from police. He described the driving that took place. He noted that the appellant was uninsured, unlicensed and over the drink-drive limit. He imposed a sentence of eight months' detention, to be served consecutively, and disqualified the appellant from driving for three years and until he had passed the extended re-test. He imposed a concurrent sentence of four months' detention for driving whilst over the legal limit. No separate penalty was imposed in respect of the other offences, save that the appellant was disqualified from driving in respect of all of them for a period of twelve months.

16. The full court granted leave to appeal on two grounds, namely: that the sentence for the offence of causing death by dangerous driving was manifestly excessive; and secondly, that by imposing a total sentence of seven years and ten months' detention, the judge had failed to have regard to the principle of totality – that is, that the total sentence is just and proportionate, having regard to the overall offending.

17. Mr Stirling, who appears for the appellant, submitted that the judge erred in considering that the offence of causing death by dangerous driving fell within level 1 of the guidelines. He submitted that it fell within level 2. Alternatively, he submitted that the judge was wrong to fix the sentence of ten years before the reduction for the guilty plea, having regard to the circumstances, the mitigating features, the appellant's age and the lack of previous convictions. He also submitted that the total sentence failed to have regard to the totality principle.

18. In our judgment, the judge was entitled to regard this offence as falling within level 1 of the guidelines. That level applies to the most serious offences and encompasses a deliberate decision to ignore the rules of the road and an apparent disregard for the great danger caused to others. Here the judge took into account the fact that the appellant deliberately drove with a person on the bonnet at speeds that were excessive in context. He was entitled to consider that driving at speed around a car park with a person on the bonnet did involve a flagrant disregard for relevant rules. There was a disregard for the great danger caused to others.

19. The starting point for a level 1 offence is eight years' custody. The sentencing range is seven to fourteen years' custody. We are satisfied that the judge fixed a sentence, before the reduction for the guilty plea, that failed to reflect the circumstances of this offending and the mitigating features. There were aggravating features in that the appellant was not licensed to drive at all. But there were also mitigating features. The victim was a friend. The appellant did not deliberately set out to cause injury. The whole thing began as the appellant and others were playing around in the Tesco car park. The victim herself took part in that by getting onto the bonnet, after one other friend had already been on the bonnet and had been driven around the car park, although, as the judge said, the appellant was the person behind the driving wheel and he could have refused to drive. The appellant was 18 years of age and relatively immature and inexperienced.

20. In all the circumstances, a sentence in the region of seven and a half years, before the reduction to reflect the guilty plea would have been appropriate. After a reduction of one-third, that would result in a sentence of five years' detention. To that extent the sentence of six years and eight months' detention for this offence was manifestly excessive. That sentence will be quashed and a sentence of five years' detention in a young offender institution substituted.

21. We turn to the second ground of appeal. The adjustment in the sentence for that offence results in a total custodial sentence of six years and two months. That sentence does reflect the total offending and involves no breach of the totality principle.

22. In terms of the period of disqualification, the judge below did not specify precisely the periods of discretionary disqualification, extension of disqualification or uplift in the manner identified as required by this court in *R v Neeham and Others* [2016] 2 Cr App R(S) 26. In the light of the adjustment to the sentence, it is necessary to make an adjustment. The intention of the judge was to impose a disqualification period of six years, starting from the end of the time actually spent in custody, less the period (approximately three months) served on remand. The appropriate way to achieve that is as follows.

23. First, for the offence of causing death by dangerous driving, the period of discretionary disqualification, under section 34 of the Road Traffic Offenders Act 1988, should be six years. To that must be added an extension period of two years and six months (that is, one-half of the term of detention for the offence of causing death by dangerous driving) pursuant to s35A of the RTOA 1988. There will be an uplift of four months: that is, to reflect one-half of the fourteen months for the other two consecutive sentences (the six months for the conspiracy and eight months for dangerous driving), less the three months spent on remand pursuant to section 35D of the RTOA 1988. The total period of disqualification is, therefore, eight years and ten months. The appellant remains subject to the requirement to take an extended re-test.

24. In the circumstances, the appeal is therefore allowed to the extent that the sentence of six years and eight months' detention for the offence of causing death by dangerous driving is quashed and a sentence of five years' detention is substituted, and the order relating to disqualification is to be amended as indicated.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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