

No: 201900775 A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

7 June 2019

Before:

Lord Justice Simon

Mr Justice Lavender

HIS HONOUR JUDGE Edmunds QC

**Regina
and
Ibrahim Khan**

Ms C Bellamy appeared on behalf of the **Appellant**

Edmunds

JUDGE On 1 February 2019, in the Crown Court at Reading, and having been committed for sentence following guilty pleas before the magistrates, the appellant was sentenced to a total of 14 months' immediate detention.

The offences all arose from the appellant's driving an A3 motorcar. For an offence of having false registration plates, he received 4 months' detention, with no separate penalty being imposed for having no driving licence, no insurance, and failing to stop when required to do so by a constable. A consecutive sentence of 10 months was imposed for dangerous driving. He was also disqualified for a total of 19 months and required to pass an extended driving test.

He appeals against sentence by leave of the single judge limited to ground 2, which argues that the total sentence did not take account adequately of the principle of totality.

The circumstances were these. On his account, the appellant had purchased the Audi A3 motorcar for £300. He was suspicious that it was stolen, although in fact it was not. It was, however, bearing false plates but he said he did not himself fit them. He had never thought about applying for a driving licence and, of course, had no insurance.

Just before 8.00 pm on 4 May 2018, police officers in Slough saw the Audi in Bath Road. The appellant was driving and two others were in the car. Police wanted to stop the car because an earlier sighting that day had identified that it was bearing false plates.

The Audi was stopped at a red traffic light in lane 2 of a two-lane dual carriageway. Police officers illuminated the blue lights on the police car and sought to stop the vehicle by pulling in front of it so that the Audi was blocked by the police car and another car driven by a member of the public.

Two officers got out of the police car to approach the Audi, telling the appellant to "stay there", at which point the car driven by a member of the public moved off and the appellant drove forward into the gap and towards PC Gilbert, plainly intent on getting away. PC Gilbert struck the passenger window with his baton but the Audi continued moving forward so that PC Gilbert had to push himself off the vehicle to avoid being struck.

The Audi then drove off pursued by the police car and was subsequently to drive through a set of red traffic lights at speed in a pursuit which lasted between 30 and 60 seconds before the vehicle stopped and its occupants unsuccessfully sought to make off on foot.

In interview, the appellant said of PC Gilbert, "He ran at me and I'm trying to find a space to drive off, so he got hit actually, well actually he only got touched". He was asked why he failed to stop for the police and said that he panicked "as I don't have a licence". He was told that he could have hurt the officer, to which he replied, "I know, but I wanted to get away. I should not have".

In the course of sentencing, the learned judge commented on the decision to drive with false plates, no insurance and no driving licence, saying that whatever his reasons for so driving, it was not a lawful one. The judge found that although the dangerous driving was short-lived there was a real risk of harm to the police officer and he drove in that way deliberately in order to try to avoid lawful apprehension by the police.

Although he was 20, he had been convicted on six previous occasions for 10 offences, including offences of robbery, actual bodily harm, battery, possessing a bladed article, attempted robbery and, lastly, assaulting a police constable. However, that was in 2015. All those offences were committed as a juvenile and he had received rehabilitative sentences. His response to supervision had been satisfactory but, as the judge found, barely that. There were breaches of a previous youth rehabilitation order and the judge thought that he had not taken the opportunity of those rehabilitative sentences to address his lifestyle, given how he was living and with whom he was associating in May 2018.

The judge took account of the appellant's circumstances and of a character reference from Selma Choudhury, which detailed some voluntary work that he had done. However, she concluded that the combination of offences was so serious that only an immediate custodial sentence would suffice. Notwithstanding what she called the litany of previous violent offences, this would be his first sentence of detention.

The judge said that for the dangerous driving the appropriate sentence after a trial would have been 15 months, which she reduced to 10 months by way of credit for plea, and for the false plates 6 months, reduced to 4, to be served consecutively. Whilst the judge did pass no separate penalty on the other motoring offences, she did not make any reference to totality and that is therefore the nub of this appeal.

The appellant was still just 20 at the time of the offence and at the time of sentence. Although he had past offences, the last on his record was committed on 9 July 2015, some two and three-quarter years before these offences. Even allowing for his having been out of the country for some of the intervening time, that is a considerable gap, particularly for a young man. He had not previously received custody.

We understand why the judge considered that immediate custody was required and that the sentences should be consecutive. A person detected in crime who then seeks to make off and in so doing endangers a police officer seeking to detain them cannot complain if a judge concludes that consecutive sentences are required, even if some might choose not to impose them.

However, in imposing any custodial sentence, the court is required to determine the shortest sentence commensurate with the combination of offences. Where it is appropriate to pass consecutive sentences the totality guideline requires that the court considers if the aggregate is just and proportionate and, if not, to take steps either by reducing the individual sentences to achieve proportionality or, in appropriate cases, imposing no separate penalty for some.

Whilst the judge did impose no separate penalty on some offences, we have concluded that the total of the custodial sentences passed was not just and proportionate.

To address that issue, the sentence for dangerous driving will be reduced to 8 months and that for false plates to 2 months, making a total of 10 months' detention. The disqualification and requirements to pass an extended driving test remain. The appropriate period of disqualification remains 12 months but the extended period required by section 35A of the Road Traffic Offenders Act 1988 will be reduced to 4 months. The upward adjustment to take account of the sentence for false plates under section 35B will be reduced to 1 month. Therefore, the total period of disqualification calculated from the date of sentence will be a total of 17 months.

To that extent, the appeal is allowed.