

Neutral citation number: [2019] EWCA Crim 1348

Case No: 201900822/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 19 July 2019

B e f o r e:

LORD JUSTICE LEGGATT

MR JUSTICE POPPLEWELL

HIS HONOUR JUDGE MARSON QC

(Sitting as a Judge of the CACD)

R E G I N A

v

ADRIAN KNOX-HOOKE

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Miss S Nwosu appeared on behalf of the **Appellant**

Mr H Sandhu appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

1. LORD JUSTICE LEGGATT: The appellant, Adrian Knox-Hooke, appeals with leave of the single judge against a sentence of six years' imprisonment imposed by Her Honour Judge Poulet QC sitting at the Central Criminal Court on 1 February 2019 after the appellant had pleaded guilty to an offence of causing death by dangerous driving.
2. At around 11.50pm on 5 August 2017, Mr Rajesh Naik, a 63-year-old man, was returning to the car park where he had left his car after collecting his wife from the Sikh Temple on Gladstone Way in Harrow. To reach the car park he had to cross Gladstone Way, which is a one-way street. It appeared safe to cross because the direction of traffic was from Mr Naik's left and the road was clear. To his right was a Mercedes car which was stationary behind another car awaiting at the T-junction at the end of Gladstone Way for an opportunity to turn onto Palmerston Road.
3. Mr Naik stepped out into the road and almost immediately as he did so was struck by the Mercedes car which had unexpectedly started to reverse. Mr Naik fell and hit his head and three days later he died from his head injury.
4. The appellant, who was the driver of the Mercedes car, had been in the area for a while having met up with some friends. There were three passengers in the car at the time of the collision. The sentencing judge concluded, we have no doubt correctly, that the appellant became impatient waiting to get out of Gladstone Way and decided to reverse back down the road, a manoeuvre which he must have known was illegal. He clearly failed to observe Mr Naik in his rear view mirror or his side mirror.
5. After knocking over Mr Naik, the appellant continued to reverse the Mercedes, travelling at an estimated speed of 6-8 mph for another approximately 20 metres. All this was recorded by a nearby CCTV camera. The appellant then stopped the car, probably because another car can now be seen coming along Gladstone Way towards the junction. He then drove forward past Mr Naik, who was lying prone at the side of the road. He drove quickly and a witness heard a screech as the Mercedes turned left without indicating. The appellant then parked the car a distance away.
6. The appellant had clearly felt the collision and knew that he had hit someone or something. He later claimed that he thought he had hit a bollard. But even if that was his first thought, the judge found – again we are sure correctly – that he must have seen when he drove forwards again that he had in fact hit a pedestrian. Nevertheless he did not stop and indeed sped off.
7. A few minutes later the appellant, in company with another man, can be seen on the CCTV recording returning on foot to the scene. By this time police and paramedics were there. The appellant hung around for a few minutes but did not speak to anyone to admit his own involvement in what had happened. He later claimed that even at this stage he had no inkling that he was responsible for the injury to Mr Naik – a claim which the judge rightly rejected as unbelievable.
8. The Mercedes car, which belonged to the appellant's mother and which he was insured to drive, was later traced and the appellant was arrested and charged with this offence. He pleaded guilty at the pre-trial preparation hearing.

9. The appellant was 30 years old at the time of the offence. He had one relevant conviction for an offence committed six months earlier of using a mobile telephone while driving.
10. The judge in sentencing the appellant was required to follow the Definitive Sentencing Guideline for Offences of Causing Death by Driving. She assessed the offence as falling at the upper level of Level 2, which has a sentencing range of four to seven years and a starting point of five years' custody. The judge took six years as her starting point, which she increased to eight years because of the aggravating features of the appellant's failure to stop at the scene and his conduct in then returning to it without coming forward to admit his involvement. The judge accepted that at the time of the sentencing hearing the appellant felt genuine remorse, but considered that any credit for this was undermined by his continued refusal to acknowledge that he had been aware that he had hit and injured Mr Naik. Giving a 25 per cent discount for the appellant's guilty plea resulted in a sentence of six years' imprisonment.
11. Miss Nwosu, who represents the appellant and for whose focused and realistic submissions this morning we are most grateful, has not pursued before us orally today the first written ground of appeal that the judge erred in determining that the offence fell into Level 2 as opposed to Level 3 within the sentencing guideline. In our view, that was a correct and realistic concession. Level 2 is described as "driving that created a substantial risk of danger" and its indicative elements include "a group of determinants of seriousness which in isolation or smaller number would place the offence in Level 3". In this case two of the characteristics associated with Level 3 offences were present. The first was a brief but obvious danger arising from a seriously dangerous manoeuvre. The second was failing to have proper regard to vulnerable road users, that is to say in this case pedestrians – the area being one in which, as the appellant must have been aware, there were many people about who were leaving the Sikh Temple and also an event at a nearby banqueting hall.
12. We reject the suggestion made on behalf of the respondent by counsel Mr Sandhu this morning that a third factor under Level 3 of driving while avoidably distracted was also a feature of this case. That factor, in our view, is intended to cover cases such as one where a driver is using their mobile telephone at the time of the offence. The only distraction that occurred here was the explanation for the appellant's bad driving in that he became impatient waiting to turn out of the road. It was not a further aspect of bad driving. In our view, this offence was correctly categorised as falling within Level 2, that is one that created a substantial risk of danger.
13. The appellant's first argument pursued orally before us today is that, having considered that the offence fell within Level 2, there was no justification for then departing from the five-year starting point. We are satisfied that there was such a justification but it consisted in our view in the features which the judge properly identified as aggravating features of the offence, that is to say the appellant's irresponsible behaviour in failing to stop and help the man he had seriously injured and in failing to acknowledge his involvement when he returned to the scene on foot.

14. That said, there is a limit to the extent to which it is appropriate to punish someone who commits a driving offence for conduct which, however reprehensible, is not an aspect of the offender's dangerous driving or part of the offence itself. In this regard it is relevant to keep in mind that the offence of failing to stop and report, which is the only criminal aspect of the relevant behaviour, carries a maximum sentence of six months' imprisonment. It is also relevant that the appellant did in this case afterwards show, as the judge accepted, genuine remorse for what he had done, as reflected in his statement in interview that his responsibility for taking someone's life will haunt him until the day he dies.
15. In our view, the very substantial uplift which the judge made to the sentence on account of the appellant's conduct after the offence was committed was not justified and resulted in a sentence which was manifestly excessive. We consider that to reflect the aggravating features identified by the judge, including the previous driving conviction, an appropriate increase above the starting point in Level 2 was an increase of one year, making six years before the 25 per cent discount given for pleading guilty. That discount makes the appropriate sentence one of four-and-a-half years' imprisonment.
16. Accordingly, we allow the appeal, quash the sentence passed by the judge and substitute a sentence of four-and-a-half years' custody. There will be a consequent alteration to the mandatory period of disqualification. The disqualification will now be for a period of seven years and three months, made up of a period of five years and a two year and three month extension.

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Lower Ground, 18-22 Funnival Street, London EC4A 1JS

Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk