

Neutral Citation Number: [2019] EWCA Crim 1322

No: 201900586/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 17 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

HAIDER MIRZA

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Mr S Cobley appeared on behalf of the **Appellant**

J U D G M E N T

Approved

MR JUSTICE POPPLEWELL:

1. Having pleaded guilty at the Magistrates' Court and been committed to the Crown Court at Derby for sentence, the appellant was sentenced by His Honour Deputy Circuit Judge Wassall on 14 February 2019 on the following charges: (1) causing serious injury by dangerous driving, contrary to section 1A of the Road Traffic Act 1988, 40 months' imprisonment; (2) failing to stop and report a road accident, four months' imprisonment to run concurrently; (3) and (4) driving without a licence and without insurance, no separate penalty, save for endorsement of licence. He was further disqualified for the minimum mandatory period of two years, plus a discretionary extension of 20 months to reflect the custodial term of his sentence, making a total disqualification of 44 months. The sentence was amended administratively to include the mandatory extended retest required by section 36 of the Act.
2. The appellant, who is now 22, appeals against sentence with leave of the single judge.
3. The incident occurred on 5 November 2017 at around 7.30 in the evening, when the appellant was driving an Audi A3 car up Normanton Road in Derby near to where he lived. It was a well lit inner city road with shops and residential buildings. There was light rain and it was a little misty.
4. The victim Mr Yousef came out of a shop, waited a number of seconds at the side of the road, checking that nothing was coming, and started crossing the road from the appellant's nearside at what was from the appellant's point of view a slight left hand curve in the road. When Mr Yousef had got over three quarters of the way across, the appellant's car hit him full on, lifting him up and hurling him onto the pavement further down the road. At the moment of impact the appellant's car was travelling at about 40 mph in what was a 30 mph limit and was almost entirely on the wrong side of the road.

It is not clear why the car was on the wrong side of the road at that stage. It may have been because further down the road the appellant had manoeuvred past a parked car on the nearside and had not regained his own side of the carriageway; it is possible that it was a misguided attempt to avoid hitting the victim by passing him on that side. The impact with Mr Yousef broke the car windscreen but the appellant did not slow down or stop; he carried on driving and left the scene.

5. Witnesses came to Mr Yousef's aide and an ambulance was called. He was taken to hospital. He had a fracture of the skull, multiple rib fractures, a pneumothorax and a bruise on the underlying lung, a fracture of the right shoulder blade bone and a fracture of the right kneecap. He had to have surgery on his right knee. The effect of his injuries was life-changing. By the time of the appellant's sentencing this February, some 18 months after the incident, Mr Yousef was still suffering recurrent pain in his shoulder and right leg and was still attending hospital appointments. He had previously been working, earning about £1,600 per month in a factory, some of which he sent home to his mother in Sudan. He was now unable to conduct that work and was on benefits. He had no home and relied on the charity of friends to provide accommodation. One leg was shorter than the other. He could no longer play football which he had previously enjoyed.
6. Meanwhile, the appellant, who had driven off in full knowledge that he had just hit a pedestrian full on, did what he could to avoid detection. A witness at the scene tried to make a note of the car's registration but could only remember part of the number plate. The police eventually traced an Audi motor vehicle in the area with a similar registration number to that given by the witness and discovered that the owner of that vehicle had actually purchased the personalised number plate from the appellant. The police were

unable to take the matter any further at that stage and they decided to put out a witness appeal. In January 2018, CCTV footage of the incident was released to the press. The investigation continued and on 25 January 2018 the appellant and others were arrested.

7. In interview, the appellant made no comment but in a prepared statement he said he was not involved. The police downloaded the content of his mobile phone. They found messages sent by him on the evening of the incident, and the day after, which made it clear that he had been the driver of the Audi which had struck Mr Yousef. The messages also indicated that his girlfriend was anxious that her fingerprints might be on the car and that she might therefore be implicated. He told her not to worry because he had disposed of the car. This was a clear recognition of his disposal of incriminating evidence. The car has never been found.
8. The appellant was re-arrested on 12 December 2018 and made no comment in interview. He pleaded guilty when charged and brought before the Magistrates' Court in Derby the following day.
9. He was 20 at the time of the incident. He has relevant driving convictions both before and since. In 2017 he received a non-custodial sentence for failing to give his name and address after an accident in which he had collided with the rear of a vehicle causing injuries to the driver which required physiotherapy. On 28 July 2018, some nine months after the hit and run on Mr Yousef, he pulled out in front of a car causing the other car to brake heavily to avoid a collision before speeding up to traffic lights which were red. A police car observed the incident and caused him to stop beyond the lights. When the officer had got out of the car to speak to him, he sped off and went down a one-way street before being caught. When stopped he gave a false name. He received a 16-month disqualification. A few days later, in August 2018, he was driving erratically in a car he

had taken and was followed by the police. He ran off on foot and was subsequently sentenced to a further disqualification for taking a vehicle without consent and driving without insurance and when disqualified.

10. The sentencing judge did not have a pre-sentence report, but there were put before him a letter from the appellant himself expressing remorse and a large number of character references which attested to the fact that he worked as a volunteer in the local community centre and was well respected in his community for doing good works.
11. In his sentencing remarks, the judge recited the facts of the incident and the injuries to Mr Yousef, observing that serious and life-changing as they were, they might have been even more serious. He referred to the failure to stop, the disposal of evidence and the other driving offences committed both before and since. He indicated that he felt unable to afford significant weight to the avowed remorse and the character references in the light of the long period during which the appellant had sought to avoid detection and his denial right up until he was charged at the Magistrates' Court. The judge said that an appropriate sentence for all the offending after a trial would be five years and giving a full one-third discount for his guilty plea arrived at a sentence of 40 months.
12. The grounds of appeal are essentially twofold. First, it is argued that the starting point of five years was manifestly excessive given that five years is the maximum penalty for this offence of causing serious injury by dangerous driving; and that this was by no means the worse sort of case of dangerous driving which comes before the courts. It would not qualify as Level 1 under the guideline for causing death by dangerous driving. Secondly, it is argued that insufficient credit was given for the appellant's remorse, what was said about him in the character references and his personal mitigation, including his youth and the fact that this was to be his first custodial sentence.

13. We think there is some merit in these points. In R v Dewdney [2014] EWCA Crim 1722, Treacy LJ explained that it was not helpful to make comparisons with the worst sort of case which might come before the courts, but that consideration of the three levels of culpability set out in the guideline for causing death by dangerous driving should afford a guide to sentencing, bearing in mind the different maximum sentences of 14 years and five years respectively for the different offences.
14. This was driving which in our view fell within Level 2 of that guideline, "driving that created a substantial risk of danger". It was not at Level 1 which is reserved for "the most serious offences encompassing driving that involves a deliberate decision to ignore or flagrant disregard for the rules of the road and an apparent disregard for the great danger being caused to others."
15. The offence was aggravated by the life-changing nature of the injuries, the failure to stop, the disposal of evidence to avoid detection and the lack of licence and insurance and by the driving record of this appellant before both and after the incident. On the other hand, the appellant was only 20 at the time and this was to be his first custodial sentence.
16. In our view a sentence after trial of 42 months would have been appropriate, which after discount for plea would fall to be reduced to 28 months. Accordingly, we will quash the sentence of 40 months and substitute for it a sentence of 28 months. The extended disqualification period therefore falls to be reduced to reflect the reduced custodial sentence. The extension period must be reduced to 14 months, which will therefore make a total disqualification period of 38 months, which will be substituted for the period of 44 months' disqualification imposed by the judge. To that extent the appeal will be allowed. We also clarify that the victim surcharge will apply.

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

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