[2019] EWCA Crim 1494
No: 2019 00610 A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 18 July 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE JAY

MR JUSTICE EDIS

R E G I N A

v

FOKRUL ISLAM

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Ms Aska Fujita appeared on behalf of the **Appellant**

J U D G M E N T
(As approved)

MR JUSTICE EDIS:

1. Fokrul Islam is now 27 years old. On 18th December 2018, before Her Honour Judge Canavan, he changed his plea to guilty to a single count of dangerous driving, contrary to section 2 of the Road Traffic Act 1988. On 17th January 2019, before the same judge, he was sentenced to 12 months' imprisonment suspended for 24 months, with 250 hours' unpaid work requirement. Nothing turns on that part of the sentence in this appeal. He was, however, also disqualified from driving for 4 years and until an extended driving test is passed. He now appeals against the length of that disqualification with leave of the single judge on that issue only.

2. The facts of this offence were as follows. At around about midday on 22nd June 2018, in a congested area in Limehouse in London, police officers in a police vehicle saw the appellant driving a car. He had stopped to pick up a passenger and then became aware of the fact that they wished to speak to him and to stop his vehicle. They had apparently observed that he was not wearing a seat belt. Instead of complying with that requirement the appellant accelerated away, causing some wheelspin in his vehicle. He did this in order to escape from the police. He drove the wrong way down a one-way street and then drove on to another road, in the process causing a vehicle coming in the opposite direction to avoid him by mounting the pavement and thus avoiding a collision. That was an event which might have had extremely serious consequences, both for the driver or any occupant of that vehicle and any pedestrians who might have been in its way. Mercifully, no great harm appears to have resulted.

3. The speed of the vehicle during the time that it was under observation by the police and before it escaped from them was not, by the standards of these cases, extreme, but it was certainly more than 20 mph, which was the speed limit. Given the nature of the roads and the other traffic around at that time, the speed was very significantly in excess of a safe one. The incident, in so far as it was observed by the police, was quite short. It appears to have taken about two minutes.

4. A little later, the police found the car abandoned not very far away from where they had first seen it. They decided to get into the vehicle by hitting it with their batons. That caused the appellant then to approach them, and he said he would let them into the vehicle. In order to do that he had to take them round the corner to where he had hidden the keys. The police searched the car and found a small packet of cannabis in the boot and arrested him for dangerous driving.

5. There was no scope for disputing any of this because body-worn cameras on the police officers who were involved in dealing with the appellant showed some of what happened while he was driving and records relevant admissions after he was stopped. He nevertheless initially claimed that he had not driven dangerously but alleged that he had been in some way targeted by the police.

6. He has a significant criminal history. He had appeared before courts on about 24 previous occasions between 2006 and 2016 for a total of 41 offences. Significantly, in May 2013, he appeared before the East London Magistrates' Court for a series of offences involving motor vehicles, committed on a number of different days: he had driven without a licence, he had taken vehicles without consent, he was driving while uninsured and so on. He was, among other things, on that occasion disqualified from driving. We will not set out the entirety of this very lengthy criminal record, but it is appropriate to observe that the most recent conviction at the time that he appeared before the judge was in May 2016 when, for a series of offences involving the supply of controlled drugs, he was sentenced to 3 years' imprisonment. He was released from that sentence on 5th January 2018 on licence, which expired on 18th May this year (2019). As a result of his arrest for this offence of dangerous driving he was recalled under the terms of his licence to prison on 5th July 2018 and detained until 5th August 2018. He was then released from that sentence and, as we have recorded, was also free under the terms of the order made by the judge with which we are concerned.

7. The sentencing remarks of the judge were brief but comprehensive. She said that he had committed offence after offence and had thrown back every opportunity the court had given him. She noted the fact that he was on licence for serious offences when he committed this offence. She noted also that the insurance which he apparently had was of no value because in order to obtain it he had concealed his antecedents. She used non-technical language which would have been easily intelligible to the appellant, describing him, among other things, as "a waste of space". Because he had already been to prison and had been recalled since this incident had happened, she decided to give him an opportunity to do something useful but she strongly suspected that he would breach the order which she then imposed. Events have proved that she was right in that respect. The appellant appears before us today by video link from Brixton Prison because he has been found to have been in breach of the terms of the suspended sentence order which was imposed and 11 months of that sentence of imprisonment has now been ordered to be served.

8. The judge did not explain at length how she arrived at the period of disqualification which she imposed, and we would not expect sentencing remarks to contain any very lengthy explanation of that kind.

9. The grounds of appeal are, in short, that the disqualification period of four years was manifestly excessive.

Discussion

10. The disqualification from driving for a period of not less than 12 months was mandatory for this offence of dangerous driving, as was the extended driving test requirement. The issue, therefore, for the judge to determine and for us to review was the length of the

disqualification. There are no guidelines for the length of disqualification in a dangerous driving case where a judge decides that a disqualification longer than the mandatory 12 months is required.

11. We have been referred to a number of decisions of different constitutions of this Court where the issue of disqualification from driving has arisen. There are many such cases, most of them dealing with particular cases on their particular facts. Some principles emerge, but these are impossible to resolve into particular lengths of disqualifications. One principle is clearly that a disqualification should not be so long that it disproportionately adversely affects the prospects of rehabilitation. It might justly be said that in all the circumstances of this case the prospects of rehabilitation do not appear promising. It is also said - and undoubtedly correctly said - that a disqualification should have in mind the length which is required to prevent harm to the public. That principle will perhaps be of most weight in the case of offenders who are somewhat younger than the present applicant because such people may be expected to grow out of their tendency to drive dangerously. This appellant is past that age and no one can know when he will cease to be a danger to the public when behind the wheel of a car.

12. There is a discernible difference in the cases which have been cited as to the extent to which a disqualification may properly be regarded as punitive in addition to its preventative function to which we have already referred. This Court in Backhouse [2010] EWCA Crim 1111 at paragraph 21 upheld a 4-year disqualification on quite different facts from the present, observing that it was intended, among other things, to have a punitive effect. That decision was cited in the much more recent case of Griffin [2019] EWCA Crim 563. That approach, namely that there is a punitive element in disqualification from driving, appears to us to be in accordance with the terms of the Criminal Justice Act 2003. Disqualification is part of the sentence, and the sentence should reflect culpability and harm and should achieve the statutory purposes of sentencing set out in section 142 of the 2003 Act which include *punishment*.

13. Having said all that, it remains the position that there is no formula by which a court can measure the right length of a disqualification: it is a judicial decision which should produce a result, tailored to the offender and to the offence. In this case the offence was serious, involving a successful attempt to avoid or at least defer an encounter with the police. The appellant had a very significant criminal record. He was on licence, as we have observed. It is not known why he was so anxious to avoid encountering the police, but it is an aggravating feature of considerable significance that that was his motive and that he did in fact evade them for a while. It seems to us beyond argument that a substantial disqualification was required in this case to reflect those facts. This was a man with a significant criminal record who chose to place entirely innocent members of the public at risk even of death in order to avoid being spoken to by the police.

14. In our judgment balancing all those factors and those sentencing principles it appears to us that the choice for the judge was for a disqualification between 3 or 4 years. It appears to us that the period which she chose, namely 4 years, was within the range that was properly open to her, albeit at the top of it. It is not possible, in our judgment, to describe her sentence of disqualification as manifestly excessive. In particular, there is no reason to suppose that 4 years in this case would create any greater risk to any rehabilitation which might be achieved by this appellant than a shorter disqualification.

15. While we are aware that the position has moved on since the sentence was imposed in the way that we have described, we have assessed the sentence as things stood before the judge in January and without regard to what has happened since. Of course, if any beneficial factor had occurred in the intervening period which might have assisted the appellant we would have had regard to it, but there is no such thing. In those circumstances this appeal is dismissed.