Neutral Citation Number: *[2019] EWCA Crim 1726*

No: 2019 00834 A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday 11 October 2019

B e f o r e:

LORD JUSTICE MALES

MRS JUSTICE CUTTS DBE

HIS HONOUR JUDGE DEAN QC

R E G I N A

v

SAMUEL DAVID CRUTCHLEY

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)

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MR JOE HARVEY appeared on behalf of the **Appellant**

MR JAMES THOMAS appeared on behalf of the **Crown**

J U D G M E N T

(As Approved)

1. **MRS JUSTICE CUTTS**: On 11th February 2019, at his plea and trial preparation hearing in the Crown Court at Derby, this appellant pleaded guilty to an offence of causing death by dangerous driving, contrary to section 1 of the Road Traffic Act 1988. On 20th February he was sentenced to 7-and-a-half years' imprisonment. He was disqualified from driving for 117 months pursuant to section 34 of the Road Traffic Offenders Act 1988, comprising 72 months' disqualification with an extension period of 45 months. An extended retest was ordered.

2. He appeals the custodial term of that sentence with the leave of the single judge.

3. On 26th January 2018 the appellant and a number of friends including the deceased, Joshua Brown, went out in Staffordshire. The appellant drove them to their first venue, the Roebuck Public House in Draycott, where they remained for over two hours. There, the appellant consumed about three pints of Stella Artois lager. Leaving the car in the car park of the public house, the group then moved to a nightclub in Uttoxeter, where they remained until approximately 3 am. The appellant continued to consume alcohol there. They were then given a lift back to the location of the appellant's car. They were captured on CCTV footage, which suggested that all were affected by alcohol.

4. That footage also showed that the boot of the appellant's car was open for some time. As the evidence subsequently established, one of the defects to the appellant's car was that it had a slow puncture to the rear nearside tyre, which caused it to be deflated. This was known to the appellant as he carried with him in his car a tyre inflation compressor pump. Subsequent examination of the tyre revealed wear on it which showed that he had previously driven his car with his tyre deflated. The CCTV footage appeared to show the pump being used to try to inflate the tyre in those early hours of the morning in question.

5. All persons in the group (five in total) then got into the appellant's car. The deceased sat in the middle of the rear seat, but he did not make use of the seat belt. The CCTV footage appeared to show that the appellant drove away slowly at first. All in the car were jovial. The appellant was described by one of the occupants as, in his words, "messing around", making the car jump and splutter in the pretence that it was running out of petrol. Someone in the car suggested that the appellant avoided the main roads as he had been drinking. The chosen route was along Aston Lane in Sudbury -- a single-track country lane governed by a 60 mph speed limit. The road surface was damp. It was obviously dark.

6. By the time he reached this road the appellant had stopped pretending that he had run out of petrol and began accelerating at some speed along Aston Lane, estimated later by the collision investigator to be between 63 and 77 mph. He drove 2.35 miles from the Roebuck car park, whereupon he came to a short shallow bend in the road. At this point his vehicle was travelling at approximately 70 mph. There, the appellant lost control of the car. It travelled off the road surface to the nearside hedgerow, before rolling on to its side and back on to the road, where it came to rest on the driver's side. The deceased was ejected from the rear window, whereupon he was lying unconscious on the ground. The group sought to administer

first aid before the ambulance arrived, sadly to no avail, as he had sustained fatal injuries. He was pronounced dead at the scene. The remaining occupants of the car suffered only minor injuries.

7. The appellant was found to be twice over the legal limit for alcohol. A back calculation showed him most likely to have had at the time of the incident 159 milligrams of alcohol per 100 millilitres of blood. A blood sample taken from him also revealed that he had taken cocaine. He was found to have 707 micrograms of metabolised cocaine per litre of blood; the legal limit is 50 micrograms. This therefore placed him more than 14 times over the legal limit for the Class A drug whilst driving. The collision investigator referred to statistics indicating that a person was eleven times more likely to die in a crash when driving with that level of intoxication than would otherwise be the case.

8. The appellant's car was also examined. The rear nearside tyre was found to have been severely deflated at 14 PSI (the appropriate pressure would have been 42 PSI) and the rear offside tyre also had tread below the legal limit. In the view of the collision investigator, Mr Brown's death was caused by the appellant driving a motor vehicle with a grossly defective tyre, whilst intoxicated, at a speed in excess of 60 mph at night on a damp single-track country lane.

9. The appellant denied in his police interview that he had driven dangerously. He accepted that he had been drinking alcohol through the course of the evening but denied that he had taken cocaine.

10. At the magistrates' court he indicated a not guilty plea before pleading guilty, as we have indicated, at the PTPH. We understand that he was represented at the magistrates' court by the duty solicitor, who was in possession of the papers in this case, including the collision investigator's report.

11. In moving statements, Joshua Brown's family set out the devastating impact of his loss upon them. It is plain they have lost a much-loved grandson, son and brother, who should have had his whole life in front of him. These statements were read to the judge. We have also read them and it is not necessary for us to repeat them. Their content, in a sense, is self-evident and entirely understandable.

12. The appellant was aged 27 years at the time of his sentence. He was of good character at the time of the offence but not at the time of sentence. On 14th January 2019 he was sentenced to a community order for an offence of driving a motor vehicle with the proportion of a specified controlled drug above the specified limit, contrary to section 5A(1)(a) of the Road Traffic Act 1988. No separate penalty was imposed for driving without insurance. This offence had taken place on 3rd November 2018 when the appellant was under investigation for the offence the subject of this appeal. The drug in question was again cocaine, with the level this time in the appellant's blood at 800 micrograms in 100 millilitres of blood (higher than in the case with which we are concerned).

13. In mitigation, the appellant relied on his lack of convictions at the time of the offence, the fact that he had a young child, his remorse, the assistance that he gave at the scene and the fact that the deceased had not been wearing a seat belt at the time of the collision.

14. In his sentencing remarks the judge accepted the prosecution's contention that this case fell within level 1 of the relevant Sentence Council guideline. This was principally because, on the blood toxicology analysis, he found it to be a "common-sense and logical inference that the appellant's driving would have been grossly impaired by his consumption of Class A drugs and alcohol".

15. In addition, he found there to be a number of determinants of seriousness which in isolation would place the offence in level 2. These he identified as the seriously culpable behaviour of the appellant in driving the vehicle with defective tyres and driving the car at an inappropriate speed above the speed limit on a damp and dark road. Although he recognised this was not a prolonged, persistent and deliberate course of very bad driving, he found the appellant to have been aware of the risks of driving whilst under the influence of alcohol and with defective tyres, shown by his decision to avoid the main roads lest he be apprehended by the police. The judge found the appellant's subsequent offence of driving with excess drugs to be an aggravating feature, noting that it was committed close to the anniversary of Mr Brown's death and showed his approach to driving following a fatal accident.

16. The judge expressly took into account the appellant's mitigation: principally his assistance to Mr

Brown at the scene, his young child, his good character prior to the offence and his guilty plea which he found to be indicative of remorse.

17. The judge reached a starting point of 10 years' imprisonment following a trial. He then applied 25% credit to reflect the appellant's guilty plea, reaching the total sentence of 7-and-a-half years' imprisonment.

18. The appellant submits that the length of his sentence is manifestly excessive. He submits that the judge misapplied the guideline by impermissibly concluding that the appellant was grossly impaired at the time of the driving, by concluding that the group of determinants were sufficient by themselves to take the matter out of level 2, and, if the offence was properly placed in level 1, by double counting the features used to place it there in aggravating the sentence and thereby increasing the starting point. It is further submitted that the judge failed to attach sufficient weight to the appellant's mitigating factors and gave insufficient credit for his guilty plea.

19. We consider that last point wholly unarguable. As we have said, the appellant was represented at the magistrates' court when he gave an indication of a not guilty plea. Whilst that was by the duty solicitor, that representative had the papers in the case, including the collision investigator's report. Had he felt unable to properly advise the appellant on plea at that stage he could have asked for an adjournment or further time within which to do so before indicating what the plea would be. He did not and we can only conclude that he felt that there was no need so to do. The appellant therefore entered his guilty plea at the PTPH. We see no reason to depart from the Reduction in Sentence for a Guilty Plea guideline, which states that full credit is generally reserved for notification of a guilty plea at the first hearing -- in this case at the magistrates' court. Appropriate credit was, in our judgment, given by the judge in this case.

20. We are similarly unpersuaded that the judge erred in finding the appellant to have been grossly impaired at the time of his driving by reason of his consumption of alcohol and cocaine. The appellant's blood alcohol was not only twice the legal limit, he also had over 14 times the legal limit of cocaine (the controlled drug) in his blood. This together with the appellant's loss of control of his vehicle leading to the collision entirely, in our view, justified the judge in concluding that this was an accident which was in large part the result of gross impairment due to the consumption of alcohol and drugs. This, in combination with the decision to avoid the main roads and the police, was sufficient for the judge to properly conclude that the appellant's driving involved a deliberate decision to ignore the rules of the road and an apparent disregard for the great danger being caused to others and entitled him to place the offence within level 1 of the guideline.

21. The guideline requests the judge in reaching the appropriate sentence to consider the determinants of seriousness. This he did -- correctly, in our view, identifying the inappropriate speed of the vehicle (that is driving at a speed above the speed limit and inappropriate for the prevailing road conditions) and seriously culpable behaviour of the appellant in driving a poorly maintained vehicle. These factors justified an increase of the starting point. As is plain from a discussion with prosecution counsel during the opening of the facts, the judge was alive to the need to avoid double counting in reaching his sentence. We find no evidence that he fell into such error in this case.

22. The judge correctly identified the later offence of driving under the influence of drugs as a further aggravating factor. The appellant was, of course, of good character at the time of the fatal accident but seems to have learned little from it. His suggested remorse has to be seen in light of the fact that, notwithstanding his dangerous driving whilst under the influence of alcohol and drugs had resulted in the death of another, he was prepared to drive once again whilst significantly intoxicated with cocaine. The judge took account of the mitigation available to the appellant in reaching the custodial term. In driving with a flagrant disregard of the rules of the road such as this, resulting in another's death, they can carry only limited weight.

23. This, in our view, was a bad case of causing death by dangerous driving. We are satisfied that the judge was entirely justified in concluding, for the reasons he gave, that this was a case of great seriousness and one requiring a substantial sentence after trial. We do not consider that the sentence passed was manifestly excessive. It was just and proportionate, and accordingly this appeal is dismissed.

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

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