

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.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral Citation No: [2021] EWCA Crim 1094

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/01301/A2



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 13th July 2021

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Burnett of Maldon)

MR JUSTICE GOOSE

MRS JUSTICE LAMBERT DBE

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

REGINA

- v -

MOHAMMED YOUSSEF

Computer Aided Transcript 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)

Mr P Jarvis appeared on behalf of the Attorney General

Mr C J Knox appeared on behalf of the Offender

J U D G M E N T

Tuesday 13th July 2021

THE LORD CHIEF JUSTICE:

1. This is an application by Her Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which is said to be unduly lenient.
2. On 6th April 2021, at the conclusion of his trial in the Crown Court at Newcastle upon Tyne before Lavender J and a jury, the offender was convicted of causing death by dangerous driving, contrary to section 1 of the Road Traffic Act 1988. He was sentenced to a term of 30 months' imprisonment.
3. Unfortunately, as a result of a defect in the recording system, we do not have a copy of the judge's sentencing remarks. Instead, some months after the events, counsel who appeared at the trial have done their best to list the main points to which the judge referred. Mr Jarvis, who appears on behalf of the Solicitor General this morning, has readily recognised the disadvantage at which he is put by the absence of sentencing remarks. He is not able positively to submit that the judge made any identifiable mistake.
4. The tragic circumstances which give rise to the underlying criminal proceedings were these. On 23rd November 2018, shortly after 4.20pm, the offender was driving home from work when he collided with and killed Emma Guilbert as he was driving along Wingrove Road North in Newcastle. He was travelling at about 40 mph, when the speed limit was only 30 mph. He passed through traffic lights as they changed from green to amber. He did not see Miss Guilbert crossing in front of him before he struck her. He was not keeping a proper lookout.
5. Miss Guilbert was an undergraduate at Newcastle University. She was walking back to her accommodation. The offender's view of her was obscured by roadside furniture until between three and four seconds before impact. It was accepted as common ground at trial that neither saw the other. Miss Guilbert crossed the road without stopping. She did so against a red pedestrian light, without pressing the button and whilst listening to music. It was becoming dark. Although Miss Guilbert was wearing dark clothing, the street lighting was on and she was thus there to be seen.
6. The offender did not stop at the scene. Reprehensibly, he drove off, leaving Miss Guilbert in the road. He was only a couple of minutes' drive away from his home, where he lived with his wife. He parked his vehicle, which had a smashed windscreen, away from prying eyes. He made an unsuccessful 999 call, but then tried to delete the record of having done so. It is clear that his early thoughts were to try to avoid detection. That was folly, as the police were soon on to him. It was unrealistic ever to suppose that he would be able to conceal the damage to his car. The accident was, in any event, recorded.
7. The police soon worked out who the driver of the car was. But before he had been found, the offender surrendered to the local police station. That was at about 7.30pm. He had been sent a clip via a WhatsApp group at 6.15 about the collision. It must have been obvious to him then, if not before, that he would be quickly identified as the driver.
8. The offender was interviewed under caution later that evening. He described hitting something, parking in a back lane, ringing 999, and then deleting the record. He explained that he went for a walk, having changed his clothes.
9. In fact, the police had been to his home. They spoke to his wife who said that he had told her that he had hit a female crossing the road and that he was going to the police station.

10. He was interviewed again the following day. He was asked whether he had been on his mobile phone at the time of the collision. He said that he had not.

11. The offender's mobile phone was seized and examined. It was confirmed that he was not on the phone at the time of the collision, but had made and received calls whilst he was driving home. The last had finished two minutes and 37 seconds before the collision.

12. The chronology of the proceedings was as follows. The offender was re-interviewed on 15th March 2019, but it was not until 26th February 2020 – nearly a year later – that he was charged. Only after charge does a criminal case enter the courts. The first hearing in the magistrates' court took place on 27th May 2020. It was delayed a little by the impact of the Covid-19 pandemic. The case was sent to the Crown Court where, at the first hearing on 4th June 2020, the offender confirmed that he would enter a plea of guilty to causing death by careless driving, but not to causing death by dangerous driving. That plea had been indicated at the magistrates' court before the matter was sent to the Crown Court. It was repeated in September 2020.

13. On the first day of the trial, 30th March 2021, the indictment was amended to add a count of causing death by careless driving, contrary to section 2B of the 1988 Act. The offender formally entered a guilty plea.

14. The issue before the jury was thus whether the offender was guilty of causing this tragic death by careless driving or dangerous driving. On the facts of this very sad case, that was a real issue.

15. Following conviction, experienced prosecuting counsel considered the appropriate sentencing range, having regard to all of the evidence as it had emerged at the trial. At the sentencing hearing, counsel submitted that for the purposes of the relevant definitive guideline, the offending fell to be sentenced within level 3. That has a starting point of three years' custody and a range of two to five years' custody.

16. The judge agreed with the view advanced by prosecuting counsel, as did Mr Knox, who appeared then as now for the offender.

17. In sentencing, the judge identified the failings of the offender as driving too fast and not keeping a proper lookout. He noted the mental trauma suffered by the offender. Indeed, a psychiatric report suggests that his causing Miss Guilbert's death has had a profound adverse impact. That, of course, is as nothing compared with the impact that her death has had on her parents, her brother, her grandparents and her wider family, all of which is spoken of movingly in a Victim Personal Statement provided by her father. The judge noted the impact on the family, and also observed that no sentence could relieve the pain that the family was suffering.

18. The judge recorded that the offender had been on the phone earlier in the course of his drive home from work, but not at the time of the collision. We infer that he was satisfied that the earlier telephone activity was no longer an operative factor in what occurred.

19. The judge referred to the serious aggravation of the offender's failure to stop and his early attempts to conceal his involvement. He made reference to the offender's lack of previous convictions and also to his positive good character. The latter was spoken to in a number of references or testimonials.

20. The mental health problems suffered by the offender had been exacerbated by the delays in bringing the case to court. In line with established authority, the judge also took account of

the additional restrictions which have been placed on prisoners as a result of the pandemic. He balanced all the factors and in consequence, having started at 36 months, as the guideline dictates, ended up at 30 months' imprisonment.

21. On behalf of the Solicitor General, Mr Jarvis does not suggest that this sentence could be stigmatised as unduly lenient if prosecuting counsel and the learned judge were correct in their view that for the purposes of the guideline this was indeed a level 3 offence. He reminds us that the guideline itself provides that the starting point and range are appropriate for a first time offender and thus there may be some double counting if the judge reduced the sentence a little on account of the absence of previous convictions, as opposed to positive good character; but he disavows any suggestion that that in itself could render this sentence unduly lenient.

22. The essence of Mr Jarvis' submission is that both prosecuting counsel and the judge made a basic error in categorising this case as level 3. That submission is advanced with some caution, given the absence of the materials to which we have referred. Nonetheless, he submits that the offending should, at least arguably, have been placed within level 2 on account of: first, the earlier use of the mobile phone; secondly, the excessive speed; and thirdly, an inadequate general regard for the safety of pedestrians.

23. By contrast Mr Knox submits that, having regard to the extensive narrative found within this guideline, it is clear that the judge and prosecuting counsel were correct in their assessment.

24. Despite the attractive way in which Mr Jarvis has advanced his argument on behalf of the Solicitor General, we are unable to accept his submission. Having regard to the factors that are identified as determining seriousness within the guideline itself, we are satisfied that prosecuting counsel was correct in his submission that this was a level 3 case and that the judge was right to approach sentence on that basis.

25. This was a tragic accident for which the offender bears the lion's share of responsibility. However, his conduct, looked at in the round, did not place his driving within level 2.

26. Mr Jarvis has relied on decisions of this court which suggest that earlier use of mobile phones and electronic devices might still be operative at the time of a later accident in the sense of continuing to be a serious distraction. In our judgment, this is not one of those cases.

27. We recognise that sentencing offenders for causing death whilst driving presents real difficulty for any judge, and intense distress for the family and friends of the victim who has died. No sentence can bring back a loved one. Nor is the sentence a trade-off for the value of a life. Judges must adhere to the guidelines. Having identified the relevant level, there always remains an evaluative judgment to locate the sentence within the relevant range, having regard to the aggravating and mitigating factors.

29. The judge in this case had the benefit of hearing all of the evidence, including expert evidence, which provided a clear insight into the offender's driving on that fateful afternoon. He took account of all the circumstances and alighted on a sentence within the appropriate range. Having rejected the primary argument advanced on behalf of the Solicitor General that this should have been treated as a level 2 offence, there is, as Mr Jarvis accepts, no basis for the suggestion that the sentence imposed was otherwise unduly lenient.

30. In those circumstances we are obliged to refuse leave.

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

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
