IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202304401/A4

Neutral Citation Number:
[2024] EWCA Crim 195

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 14 February 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MURRAY
THE RECORDER OF PRESTON
HIS HONOUR JUDGE ALTHAM
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
ANTON HULL

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MISS S PRZYBYLSKA appeared on behalf of the Attorney General
MR P MASON appeared on behalf of the Offender

J U D G M E N T

1. LORD JUSTICE WILLIAM DAVIS: On 17 November 2023 the offender, Anton Hull, who was then aged 21, was sentenced in the Crown Court at Taunton to a period of six years' imprisonment for an offence of causing death by dangerous driving. He had pleaded guilty to that offence when it first appeared on the indictment at the Crown Court. He was disqualified for holding or obtaining a driving licence for a total period of nine years, namely a discretionary period of six years and an extension period of three years.
2. His Majesty's Solicitor General now applies pursuant to section 36 of the Criminal Justice Act 1988 to refer the sentence to this court as being unduly lenient.
3. On the evening of Saturday 18 August 2022, Sarah Baker, a 29-year-old woman with plans to become a teacher, was driving from London to the West Country along the main A303 road. She was due to stay with a friend. She was alone in her VW vehicle.
4. Shortly before 11 o'clock in the evening she had to leave the A303 due to roadworks. She followed the diversion signs onto an unclassified road near Wincanton.
5. The offender was driving a flatbed Transit van in the opposite direction along that unclassified road. He was local to the Wincanton area. He was driving home having spent the evening at a pub in South Cadbury, approximately three miles distant. As the offender and Miss Baker converged, the offender's van went onto the wrong side of the road and into the path of the oncoming VW being driven by Miss Baker. She had no chance to avoid a head-on collision. She died instantly.
6. The offender's ability to drive was highly impaired by alcohol. He had spent the evening with his step-father and friends. They were aware that by the later part of the evening he was not in a fit state to drive. They had told him as much. Arrangements were made for someone to come and give him a lift home. The landlord of the pub became involved.

He offered to move the offender's van to a safe place at the rear of the pub. By 10.30 in the evening the offender's condition was such that bar staff were refusing to serve him any more drink. The offender's mother, with whom he lived, was at home. She heard from people in the pub about his drunken state. She texted him twice at around 10.55 in the evening in blunt terms, saying: "You fucking drive home and I won't speak to you again." The offender responded saying: "No, I ain't".

7. Despite all of that, the offender set off from the pub in his van. On three occasions between leaving the pub and the collision with Miss Baker's VW he took short videos of himself on his mobile phone as he was driving home. In the first video the van was in motion. The offender was heard to say: "I'm fucking smashed, I don't know about you, mate, but I am fucking smashed". At the time of the second video the van was briefly stationary at a junction. At that time the offender said: "You don't want this, I'm fucking smashed." He posted that video to Snapchat. The third video was taken as the offender drove in excess of 50 mph close to the site of the collision. No words could be heard, although the offender was clearly saying something. This video was also posted to Snapchat.
8. The offender was injured in the collision. He was taken to hospital. Blood samples were taken from him at 5.37 am. Back calculation of the level of alcohol in his blood indicated a minimum level of 112 micrograms of alcohol per 100 millilitres of blood, with the likely level being higher, namely 157 milligrams of alcohol per 100 millilitres of blood. That is approximately twice the legal limit.
9. The observations of those who became upon the offender at the scene of the collision was of someone who was shouting and swearing and smelling strongly of alcohol. His speech on the short videos he took was slurred. He gave every indication of being seriously

affected by drink.

10. As we have said, the offender was seriously injured in the collision. He was in hospital for some time. He sustained fractures of the right hip, right femur and bones in his right foot. He suffered a traumatic dissection of the aorta which required surgery.

11. Following his discharge from hospital, the offender, in November 2022, was interviewed. He provided a prepared statement which read as follows:

> "On 18~August 2022 I was the driver of a Ford Transit tipper that was involved in a collision with a VW. I was driving towards Wincanton at about 40 to 45mph when I saw headlights of an oncoming vehicle on my side of the carriageway. I tried to turn into the bank on my side, but was unable to do so. The oncoming vehicle hit my driver's side which span me round. At no time did I pass into the opposite carriageway during the incident."

12. He made no comment to questions put to him thereafter. He was told about the conclusion of the collision investigator as to the respective positions of the vehicles, which contradicted what he said. When told about that the offender said nothing.

13. As well as the material on his mobile telephone relating to the evening of the collision, the police recovered two other short videos taken by the offender. In each case he was driving a convertible car rather than the van he was driving at the time of the collision. In those videos he made comments about the fact that he was drunk, saying: "I am pissed. I am fucked." The offender's mobile telephone also contained messages sent by his mother on six separate days in the month prior to the collision. In each case the message was sent in the early or middle part of an evening. Each message related to the offender's tendency to drink and drive. For instance, on 5 August 2022 the mother said: "You've got to promise me you're going to stop drink driving." The most recent message prior to the evening of the collision was on 16 August 2022 and read as follows:

> "I don't want you drink driving. Every weekend I am worried I am going to wake up to a call that you're in a police station. You're making me ill. You've got to stop it."

14. The judge had a pre-sentence report which had been prepared at the time when the offender was charged with an offence of causing death by careless driving when under the influence of alcohol. This was the charge thought to be appropriate prior to the discovery of the material on the offender's mobile telephone. In the report, the offender said that he had no recollection of anyone advising him not to drive. He said that he had had four or five pints of Guinness and that he felt fine to drive. He described the collision as "an unfortunate accident". The author of the report assessed the offender as being naive and immature with deficiencies in consequential thinking. Because of the point at which it was prepared, the report did not consider the impact of the text and video material on how the offender was to be viewed.
15. There was a victim personal statement from a lady called Christina Biltcliffe. She was the sister of the deceased. She described herself and her sister and their brother as a close-knit unit. She explained that in 2018 their mother had died from pancreatic cancer. Shortly thereafter their father had become very poorly and passed away. As the sister put it in her statement: "We naively thought that perhaps we had had our fair share of grief ... but then we were dealt the worst blow of them all, at age 29, Sarah had her life taken away from her. The only saving grace is that our mum did not have to live this nightmare with us, it would have simply destroyed her." Christina Biltcliffe went on to explain how Sarah was making a life for herself, having just finished her master's degree to enable her to become a teacher. Sarah had been a huge support to Christina whilst she was pregnant, Christina having given birth very shortly prior to Sarah's death. As she put it in her

statement, "I can't imagine what my husband and I would have done without her." But now there was not a day that went past without thinking what had happened and the loss that they have felt and of course Sarah herself has had. She concluded by saying this: "Sarah was the absolute best of us. Not only was she our sister and my best friend but she was a truly loved daughter, niece, cousin, friend and although my little boy didn't know it, a superhero of an aunty."

16. In sentencing, the judge described the offender's decision to drive as "unbelievably selfish". He knew full well he was far too drunk to drive. The situation was made worse by using a mobile telephone to record videos of himself, two of which were posted to Snapchat. The judge rehearsed the victim personal statement which he described as being one of "extraordinary eloquence and power".

17. He accepted that the offender was genuinely remorseful. He noted that the offender had suffered severe injuries that have had and would continue to have a physical and psychological effect. The judge considered that although purely a consequence of the offender's own criminal conduct, they would make the sentence more difficult.

18. The judge identified four culpability factors which placed the offence into the highest level of culpability in the relevant guideline:

(i) Deliberate decision to ignore the rules of the road and to disregard the substantial danger to others.

(ii) Use of a mobile telephone on more than one occasion.

(iii) Capacity to drive highly impaired by drink.

(iv) Persistent disregard of the warnings of others - the landlord of the pub, step-father and friends and mother.

19. In terms of mitigation, the judge concluded that the offender's age and immaturity was

significant. The judge observed the effect of the injuries which he concluded explained to a significant degree the shifting of responsibility in the prepared statement.

20. The judge, referring to the Sentencing Council guideline in relation to causing death by dangerous driving which came into effect on 1 July 2023, observed that there was a big difference between the starting point in the for culpability A, namely 12 years, and that for culpability B, six years. He said that in his view there was a degree of overlap. He used these words:

> " ... there is a degree of discretion and there are judgment calls to be made ... before taking account of mitigating and aggravating factors and before credit for plea, the sentence after a trial would have begun at 10 years."

21. He said the mitigation reduced that to eight years and the 25 per cent reduction for the plea of guilty led to the eventual sentence of six years.

22. On behalf of His Majesty's Attorney General it is submitted that the judge correctly identified four culpability factors placing the offence into Category A in the guideline. The starting point for a Category A offence is 12 years. Where there are multiple culpability factors a judge should consider an upward adjustment within the category range. Here the judge adjusted downwards with no satisfactory explanation for doing so. That, it is submitted, was an error. Further, it is said that the judge fell into error when he reduced the sentence before reduction for plea by two years to take account of mitigation. The argument is that the error was twofold. First, insufficient weight was given to the aggravating factors: the offender had told the police that Miss Baker was on the wrong side of the road; the offender's previous uses of his mobile phone when driving in drink. Second, the mitigating factors were not of the weight afforded to them by the judge. It is

argued that the remorse as reported by the probation officer was not a genuine expression of contrition. It did not indicate true insight into what he had done. Moreover, the offender's injuries had limited relevance (a) because of the lack of evidence as to their long term effect, and (b) because they resulted from the offender's own criminality.

23. On behalf of the offender, it is argued that the judge was correct to observe that there is a significant gap between the starting point for a Category A case and the starting point for a Category B case. In oral argument this morning, Mr Mason has invited us to conclude that in reality there were only two Category A factors, namely the consumption of drink and the ignoring of warnings. The use of the phone was not prolonged. Thus, as a culpability factor it fell into Category B. That required a balancing exercise which the judge carried out. Moreover, it is said there was mitigation that was powerful, namely the remorse of the offender and the effect on the offender of his injuries. That mitigation justified a significant reduction in the sentence. The judge did not err in making the reduction he did. The outcome was, it is argued, a just and proportionate sentence.

24. The correct formulation of what is an unduly lenient sentence is still that provided by the then Lord Chief Justice in Attorney General's Reference No 4 of 1989 [1990] 1 WLR 41:

> "A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

25. It follows that for us to conclude that this sentence was unduly lenient, we must find that it was not reasonably appropriate for the judge to adjust the sentence downwards from the Category 1A starting point and/or for him to give a net reduction of two years to allow for mitigation.

26. The Sentencing Council Guideline which came into effect on 1 July 2023 reflects *inter*

alia the increase in the maximum sentence for the offence of causing death by dangerous driving, effective from June 2022. Prior to that date the maximum sentence was 14 years' imprisonment, it now stands at life imprisonment.

27. The guideline provides for three categories of culpability. Culpability A relates to the most serious cases and provides a starting point of 12 years with a category range of eight to 18 years. As with all guidelines, the task of the judge first was to determine into which category the offence fell. He was unequivocal in the assessment of the culpability factors. He identified four which fell within culpability A, to which we have already referred. Culpability B factors include: use of a mobile telephone, where that use is limited; driving is not highly impaired by drink; where any warning has not been persistent. In no instance did the judge in this case conclude that a Culpability B factor applied. That was the only reasonable conclusion. For instance, although the offender only used his mobile phone to take videos on three occasions, he did so throughout the journey on which he was engaged which covered about three miles prior to the collision. In that time at different points on the clock he took three separate videos, two of which he uploaded to Snapchat. That on any view was prolonged use of the mobile phone, as was found by the judge. The suggestion to the contrary is unrealistic.

28. The audio content of the videos demonstrates quite how drunk the offender was, a conclusion strengthened by the evidence from the pub and from those who arrived at the scene of the collision. The offender plainly was warned by his friends, by the landlord of the pub and by his mother not to drink and drive. In those circumstances the only reasonable course available to the judge was to take a starting point of 12 years and then to ask whether an uplift was required before any consideration of aggravating and mitigating factors. The combination of driving when very drunk, ignoring repeated

warnings of the dangers of driving in that condition and using a mobile telephone to glorify the extent of his inebriation could only lead to an upward adjustment of the sentence from the starting point of 12 years. In our view that adjustment should have resulted in a sentence of 14 years before any consideration of aggravating and mitigating factors. It follows that the judge's decision that the sentence before consideration of mitigating factors should be 10 years was a clear error.

29. Reference was made in the course of the sentencing exercise to the fact that the offender was driving a light goods vehicle. That can be an aggravating factor, particularly if the vehicle is loaded. In this instance the nature of the offender's vehicle was of little or no significance. The judge correctly gave it no weight.

30. The judge did not give any weight to the offender's statement to the police that Miss Baker had been on the wrong side of the road because this was something said shortly after the offender had been discharged from hospital. The judge did not consider that it fell squarely into the aggravating factor of wrongly placing the blame on others. We consider that was a very generous view. What the offender said was in a prepared statement made in November 2022, namely some three months after the collision. It was something from which she had not fully resiled even when he spoke to the author of the pre-sentence report.

31. The guideline in respect of the aggravating factor of blame wrongly placed on others identifies that the factor will not be engaged where an offender has simply exercised his right not to assist the investigation or accept responsibility for the offending. If the offender in this case had merely said nothing to the police, or said something relatively neutral in terms of positions of vehicles on the road, the factor would not have been engaged. The prepared statement which we have already quoted went much further than

that. This was a case in which the offender wrongly placed the blame on others. The fact that it was his victim makes it worse.

32. The judge considered that there was genuine remorse, that the offender's injuries would make any prison sentence difficult and that his age and immaturity were relevant to sentence. We cannot go behind the judge's conclusion in respect of remorse. Equally, the judge did not say that he gave it particular weight; he merely mentioned it. Given the matters relied on by the Solicitor General to which we have already referred, we conclude that the judge cannot properly have given it significant weight.

33. In relation to the injuries, the judge noted that these were entirely the consequence of the offender's own criminal conduct. In our judgment for the effect of these injuries to be of any mitigating value at all there would have to be clear evidence of substantial problems that they would cause the offender in serving a prison sentence. There was very little evidence of any such problem existing.

34. Age and immaturity were matters to take into account. Even now the offender is only just 22. He was 20 at the time of the offence. The effect of this factor has to be reduced to some extent by the fact that this offender drove in the teeth of many warnings given to him. What he did was not an impulsive act governed only by his own lack of reasoned thinking; rather he deliberately drove despite the advice that he had been given by those with his best interests at heart. Nonetheless, lack of maturity is a factor which must be reflected in any sentence in a person of this age.

35. The judge did not refer to the offender's good driving record or lack of previous convictions. Given the content of the messages sent by the offender's mother over the weeks leading up to the offence and the videos taken by the offender on a day or days prior to the offence we consider that the judge was entirely right to discount that factor.

Mr Mason in his oral submissions does not press the point.

36. Standing back, in our judgment a judge giving proper weight in particular to the age and immaturity of the offender would have reduced the sentence from 14 years to twelve-and-a-half years. That would have been more than sufficient reflection of the available mitigation. It would have taken account of the fact that the weight of the aggravating factors was relatively limited.

37. The offender was entitled to a reduction of 25 per cent by reason of his plea of guilty. Applying that reduction to a term of twelve-and-a-half years gives a sentence to be served, slightly rounded down, of nine years and three months. The sentence in fact imposed, as we have said, was six years. We are satisfied that the sentence imposed fell outside the reasonable range of sentences open to the judge in dealing with the offence committed by this offender.

38. It follows that we give leave to refer the sentence imposed in the Crown Court at Taunton. We quash the sentence of six years' imprisonment and substitute in its place a sentence of nine years three months' imprisonment.

39. The disqualification will require adjustment to take account of the new sentence. The offender now will spend at least two-thirds of the custodial term in custody. Therefore, the extension period will be increased from three years to six years two months. The discretionary period of six years will remain unaltered.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk