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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Wednesday 6th February 2019

B e f o r e:

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

MRS JUSTICE CHEEMA-GRUBB

and

MR JUSTICE MARTIN SPENCER

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ATTORNEY GENERAL'S REFERENCES

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E G I N A

- v -

BRANDEN MARC DANIELS

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Mr W Emlyn Jones appeared on behalf of the Attorney General

Mr M Brook appeared on behalf of the Offender

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J U D G M E N T
(Approved)

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Wednesday 6th February 2019

THE LORD CHIEF JUSTICE:

Introduction

1. On Sunday 29th July 2018, at about 8.20pm, the offender, Branden Daniels, was driving a stolen Audi A3 with four passengers in an area about five miles north of the centre of Birmingham. They were joy riding. They became involved in a police chase over a distance of about one and a quarter miles. Although in a residential area with a 30mph speed limit, the Audi reached a speed of 80mph and at a little over 70mph approached the junction between Kingsland Road and Wandsworth Road. The Audi was driven by the offender straight over the junction and collided with a Volkswagen Golf being driven by Connor Donnelly with Sarah Giles as his front seat passenger. Sarah Giles, who was only 20 years old, was killed instantly. Connor Donnelly suffered serious injury, as did one of the passengers in the Audi engaged in the criminal enterprise, Dalton Banks.

2. The offender was prosecuted for causing death by dangerous driving, contrary to section 1 of the Road Traffic Act 1988 (count 1) and for causing serious injury by dangerous driving, contrary to section 1A of the 1988 Act (counts 2 and 3). He pleaded guilty at the plea and trial preparation hearing, having indicated at an earlier hearing in the magistrates' court that he would contest the matter on the ground that he was acting under duress.

3. The offender, who was born on 12th May 1988 and so was 20 years of age at the time of this dreadful, tragic incident, was sentenced to six years and six months' detention in a young offender institution on count 1 and to concurrent terms of four years' detention on each of counts 2 and 3. He was disqualified from driving for nine years and three months and until an extended test was passed.

4. Her Majesty's Solicitor General applies, under section 36 of the Criminal Justice Act 1988, for leave to refer the sentence to this court on the ground that it was unduly lenient. He does so in reliance on three arguments: first, that in arriving at the overall sentence the judge moved too far from his starting point on account of the youth, immaturity and vulnerability of the offender; secondly, that in the round the sentence failed to reflect public concern about offending of this nature, namely, joy riding committed by young men; and thirdly, that the judge should not have given the offender the full discount for his guilty plea, but should only have discounted the appropriate sentence by one-quarter.

The Facts

5. Police officers first noticed the Audi A3 because its number plate appeared to have no manufacturer's markings. That led the officers, correctly as it turned out, to suspect that the car was stolen. In fact, it had been stolen three days earlier and was being driven with false number plates. The Audi accelerated away from the police car in Hartley Road. The officers followed with their sirens turned on and lights illuminated. The car continued to accelerate. In Hartley Street the Audi reached 62mph. In Rough Road it achieved a speed of about 80mph. It was then driven the wrong way around a roundabout into Kettlehouse Road. In Kilburn Road it was driven at about 60mph, and at the crossroads where the collision occurred was travelling in excess of 70mph.

6. The force of the collision was such that both vehicles were sent spinning through the air. It was obvious to the police officers who went to the vehicles as quickly as they could that Sarah Giles had died and that both Mr Donnelly and Mr Banks were seriously injured. The other occupants of the Audi ran away. So, too, did the offender. He was chased and caught by local residents. The offender did not have a driving licence and inevitably he was uninsured.

7. Connor Donnelly suffered a life-threatening injury to his aorta, which required emergency surgery and the insertion of a stent. He had multiple rib fractures, lacerations to his spleen and to one of his kidneys. He was sedated in a coma for three days. In his Victim Impact Statement, Connor Donnelly describes his horror on waking to be told of Sarah Giles' death. She was his partner. He had met her at work. He now wished to leave his job because it constantly reminded him of her. He had been a fit and healthy young man but, as a result of the injuries he sustained, will need to take medication indefinitely. He describes himself as "a broken man".

8. Dalton Banks suffered a broken hip, punctured lungs and multiple lacerations to his face and head. He sustained a brain haemorrhage which required emergency surgery, including the removal of part of his skull. He, too, was in a coma for several days and remained in hospital for about three months. Further surgery is planned to insert a metal plate. He has memory problems, slurred speech and has had behavioural changes.

9. The Victim Impact Statements from Sarah Giles' family are deeply moving. There are statements from her parents, her siblings, grandparents and her aunt. Members of Sarah Giles' family are in court today. We extend our sympathy and pay tribute to the calm and dignified way in which they have listened to the proceedings. They speak of the terrible loss of a much loved, vivacious, generous and hard-working young woman. It is a loss with which all are struggling to come to terms.

10. The offender was interviewed under caution on 30th and 31st July 2018. He suggested that he had been in the Audi for only a short time. The four passengers, he said, had arrived in the Audi and offered him a lift, which he reluctantly accepted. He said that they told him to drive, that he tried to refuse and only relented in the face of threats of violence from the others. He added that they told him not to stop when the police chase began, and that he ran from the scene

because he thought that the others would beat him up.

11. Much of that account was demonstrably false, whatever may have been the impact of peer pressure in what was a joint joy-riding exercise. Video clips on the offender's mobile phone showed him and others in different vehicles being driven dangerously and at very high speeds on earlier occasions. None showed him as the driver. However, and tellingly, there was also footage on his phone taken while the Audi was being driven by him an hour before the collision. The suggestion that he had recently joined the vehicle and was pressured into driving it was clearly not true.

12. The offender had a previous conviction on 31st October 2017 for driving otherwise than in accordance with a licence and without insurance. He also had an old caution from 2013 for theft from a vehicle.

The Sentencing Guideline

13. The Sentencing Guidelines Council issued its definitive guideline in respect of causing death by driving in July 2008. By virtue of section 172 of the Criminal Justice Act 2003, every court must have regard to a guideline relevant to the offending it is considering. This guideline applies only to sentencing offenders aged 18 and over. The maximum penalty for causing death by dangerous driving is fourteen years' custody; and for causing serious injury by dangerous driving, five years' custody. Those maximum sentences reflect the existing considered view of Parliament. The guideline divides cases of causing death by dangerous driving into three different levels. That can be very difficult for those who have lost a loved one to understand because the impact on the family is as serious, whatever the underlying nature of the dangerous driving.

14. Level 1 is reserved for the most serious offences, encompassing driving that involves a deliberate decision to ignore, or a flagrant disregard for, the rules of the road and an apparent disregard for the great danger being caused to others. An offence within level 1 attracts a starting point of eight years' custody and a range of seven to fourteen years' custody. Level 2 is concerned with cases where the driving created a substantial risk of danger. The starting point is five years' custody and the range four to seven years' custody. Level 3 is concerned with driving that created a significant risk of danger, the starting point for which is three years' custody and the sentencing range two to five years' custody. The guideline identifies seven specific additional aggravating features:

i) Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving;

ii) More than one person killed as a result of the offence;

iii) Serious injury to one or more victims in addition to the death or deaths;

iv) Disregard of warnings;

v) Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence, driving whilst disqualified, driving without insurance, taking a vehicle without consent, driving a stolen vehicle;

vi) The offender's irresponsible behaviour, such as failing to stop, falsely

claiming that one of the victims was responsible for the collision or trying to throw the victim off the car by swerving in order to escape;

vii) Driving off in an attempt to avoid detection or apprehension;

15. It is apparent immediately that many of these aggravating features are present in this case. The guideline also identifies a series of particular mitigating factors beyond those usually considered in sentencing, although none, as it seems to us, is in play here.

16. Offences of causing death by driving are heart-breaking and particularly difficult to sentence. As a result, they attract a good deal of public attention. The judge's task is to consider with care all of the material that is placed before him or her.

17. In this case the judge provided comprehensive sentencing remarks. At the outset, he noted a most important factor: the tragedy of Sarah Giles' death. He summarised the serious injuries suffered by Connor Donnelly and Dalton Banks, but observed that the latter was to a great extent a contributor to his own injuries. That is because he took part in the joy riding. The judge made it clear that he would sentence in accordance with the guideline. He then turned to the "significant aggravating features". He noted that the offender clearly enjoyed joy riding because of the other incidents of being a passenger in vehicles illustrated on his mobile phone. The car was stolen and was being driven with false plates. The judge did not accept that the offender was bullied into driving, as he had originally suggested, but he did accept that the others in the car had encouraged him in what he did. The judge referred to the absence of a licence and insurance; the fact that the offender had tried to escape from the police; and the very high speeds at which the Audi had been driven in the time leading up to the collision. It was an aggravating feature that the offender attempted to run away.

18. The judge referred to the youth of the offender and also to the significance of the previous driving convictions. He said that he would give the offender full credit for his guilty plea.

19. The judge referred to the pre-sentence report and to the psychological report that were before him. He also referred to testimonials from those who describe the offender as ordinarily a kind and considerate person. The judge said:

> "I accept that you are of low intelligence, immature, vulnerable and easily led."

The offender demonstrated, in the judge's view, genuine remorse, which the judge contrasted with the attitude of many defendants in criminal cases who, in truth, only feel sorry for themselves.

20. The judge referred to *R v Robert Anthony Brown* [2018] EWCA Crim 1775; [2019] 1 Cr App R(S) 10, for the now uncontroversial proposition that offences of causing serious injury by dangerous driving should be reflected in concurrent sentences, but with an increase in the sentence for the offence involving death. The judge noted, correctly, that the driving in *Robert Brown* was worse than that with which he was concerned and that it resulted in more than one death. Moreover, he noted that the offender in that case was aged 53 – significantly older than the offender with whom we are concerned. We would add that the offender in that case had an appalling criminal record, with 57 convictions for 209 offences. He had been sentenced previously to a term of imprisonment of six years and he had 30 convictions for driving whilst disqualified. In *Robert Brown* the features to which we have referred led this court to conclude that there should be a starting point of fourteen years' imprisonment, but reduced by six months

to reflect the genuine remorse of the offender.

21. It was common ground before the judge that he was clearly dealing with a level 1 offence. With that in mind the judge said:

> "In my judgment, the proper starting point for this offence for someone more mature and less vulnerable [than] you would be twelve years' detention. I reduce it to ten years, my starting point, because of your youth and vulnerability. I reduce it further because of your guilty plea, and I think it is proper to give you the full credit for that so the sentence is six years and six months."

22. As we have indicated, concurrent sentences of four years' detention were imposed on each of the counts for causing serious injury by dangerous driving.

The Evidence of the Immaturity and Vulnerability of the Offender

23. The judge had before him evidence that the offender had from the outset struggled at school. He was the subject of a Statement for Special Educational Needs when he was 11 years of age and was thereafter diagnosed with Attention Deficit Hyperactivity Disorder. He was bullied at school to such an extent that in 2014 his family decided to move in order to relocate him in a different area. A week before the planned move, the offender's father died suddenly. That had a deep effect on the family and upon the offender. He began to suffer from depression, from which he continues to suffer. He left school at the age of 16 with no qualifications. He did not proceed to any further education and he has never had any consistent work. The limit of his activities has been occasional casual labouring and the like. Shortly before this offending, he was provided with shared accommodation with a support worker on site.

24. A family friend, who has known the offender all his life, said in a document before the

judge:

> "[The offender] does have a few difficulties, his mind being younger than his years for one, and he can find himself easily led."

25. The judge was provided with a psychological report prepared by Dr Tim Hull, dated 8th October 2018. Dr Hull noted that when he was interviewed by the police, the offender had his mother present as an appropriate adult. That suggests that, despite his being 20 years of age, there were concerns about his ability to be interviewed in the ordinary way as an adult. Dr Hull elicited a history which covered the educational experiences to which we have referred. His mother explained at the time he received the Statement of Special Educational Needs, he was assessed as performing at four or five years younger than his chronological age. Dr Hull quotes his mother as saying:

> "In my eyes I would not class Branden as an adult. He does not have an adult view on life. He is still like a child. He still cannot read and write properly and he does not see a danger in things. He is very immature."

26. Dr Hull tried to assess the offender's intellectual functioning. He was unable to do so satisfactorily. The raw IQ score that he measured placed the offender in the lowest one per cent of the population. But Dr Hull considered that the real IQ measure was a little higher. He said that he noted that the offender had difficulty in understanding questions put to him, quite apart from the difficulties he had encountered during the police interviews. His overall conclusion was:

> "All of the evidence I have available suggests that [the offender] is a highly vulnerable individual who, in the presence or absence

> of specific disabilities has been bullied throughout his life and has suffered from difficulties with his mental health. He is currently not taking prescribed medication for depression. This is likely to exacerbate his mental health problems."

Dr Hull confirmed his view that the offender is vulnerable.

27. The pre-sentence report added a little to that information. It spoke of the offender's genuine remorse. It described in particular how the offender spoke only of the impact of his offending on others, rather than speaking of its impact on him. Its author had the same experience as Dr Hull because of the offender's difficulty in understanding questions he was asked. He reviewed the recent history and concluded that he had relatively low maturity for his age and, in the round, viewed him as immature for his age. Amongst the matters that the author of the pre-sentence report recommended that the court should take into account when determining sentence were the offender's "learning issues, immaturity and remorse".

Discussion

28. Mr Emlyn Jones on behalf of the Solicitor General takes no issue with the judge's approach in fixing the notional starting point for a mature adult before any discount for a guilty plea at twelve years' custody. Given the fourteen year maximum and the approach to the imposition of concurrent sentences for the offences involving serious injury, there is, in our view, no doubt that twelve years was a proper starting point. That said, as Mr Emlyn Jones very fairly indicated in the course of his oral submissions, there could have been no complaint if the judge's starting point had been a little lower, particularly having regard to the genuine remorse displayed by the offender.

29. The principal ground of attack upon the judge's approach to sentencing is that he reduced

his starting point by more than was appropriate, to take account of the offender's youth, vulnerability and immaturity. Again fairly, on behalf of the Solicitor General, Mr Emlyn Jones recognises that some reduction on that account was appropriate. But we are unable to accept the submission that the judge erred in reducing his starting point by the degree to which he did.

30. Both counsel have reminded us of what was said in this court in *R v Clarke and Others* [2018] EWCA Crim 185 at [5]:

> " Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 is an example of its application: see paragraphs [10] - [12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. The Age of Adolescence: thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

31. The guideline for sentencing children and young people explains that one of the reasons why offenders aged 18 and under receive sentences reduced by half and more, as compared with adult offenders, is because their culpability is lower on account of their lack of development and maturity. At paragraph 1.5 of that guideline we find this:

> "It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and

> may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. … When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater)."

32. The absence of a "cliff edge" (as referred to in *Clarke*) is an important factor when sentencing those over 18 years of age but who are not fully mature. The guideline to which we have just referred does not apply in such cases, but the factors quoted from paragraph 1.5 can weigh in considering the appropriate sentence in cases involving young adults who are not fully mature. No doubt science will in time tell us more about the development of the young adult brain and its impact on behaviour. But there will be cases – and this, in our view, is one of them – where there is material available to the sentencing court which speaks about the maturity and developmental reality of the offender in question.

33. We have summarised the evidence that was before the judge touching on the vulnerability and immaturity of this offender. We consider that the reduction given by the judge in this case on the basis of that evidence was an appropriate reduction.

34. A linked argument was advanced by Mr Emlyn Jones to the effect that public concern surrounding offences of death by dangerous and careless driving, committed often as they are by young men engaged in joy riding, should result in courts being less willing to take full account of youth, immaturity and vulnerability when passing sentence as they would either for other offences or for other offenders.

35. We have seen no statistical breakdown of the ages of those who commit this type of offence, but have no difficulty in accepting from our own experience that many such cases do indeed involve young drivers. However, cases involving death caused by dangerous or careless

driving frequently arise in the context of fully mature adults. The case of *Robert Brown*, to which we have already referred, is an example.

36. The feature to which Mr Emlyn Jones has referred does not, in our judgment, justify a departure from ordinary sentencing practice and principle, namely, to take account of matters such as youth, vulnerability and maturity when passing sentence.

37. Finally, Mr Emlyn Jones submits that the judge was wrong to accord the offender the full discount for his guilty pleas. We agree that the judge was generous in giving the full discount, as opposed to a discount of 25 per cent, which would have represented a direct application of the guideline given the time of which the guilty plea was entered.

38. At his interviews, the offender provided an explanation which suggested that he was at all times under intolerable pressure to do what he did. As we have indicated, the materials found on his phone demonstrated that to be untrue. The offender was given the opportunity to indicate his plea at the magistrates' court. On his account, it was suggested that he would run a defence of duress. That was an evaluation made by those then advising him. Even on his own initial account, the defence of duress would have stood little prospect of success. But his account was untrue. At some point between his first appearance in the magistrates' court and the plea and trial preparation hearing, the offender determined to accept his responsibility. The relevant guideline suggests that ordinarily the reduction for guilty pleas at that hearing should be 25 per cent. There is an exception identified in the guideline, where the court accepts that further information, assistance or advice is necessary before indicating a plea.

39. Mr Brook submits that it was reasonable to await the psychological report before expecting the offender to enter a plea. In our view, that is not this case. The problem with the defence as

putatively advanced in interview was that it was based, at least in part, on a series of lies.

40. Whilst we accept that the judge was generous in according the offender the full discount, as is common ground between counsel, our task is not to unpick the judge's reasoning but to ask the broader question: whether the sentence imposed was outside the range of sentence which a judge could have imposed on the basis of all the information available surrounding the offences and the offender. It is only if the sentence is outside that range, and by a margin, that it can be described as unduly lenient.

41. In a sentencing exercise judges have to take account of two broad considerations: first, the harm caused by the offending; and secondly, the culpability. The harm in this case was at the highest level. Inevitably, in the course of an application of this sort, the focus of submission and also the focus of the judgment that we are giving is on questions of culpability. But we emphasise that at no point do we lose sight of the harm that was caused by this offending and its dreadful impact on so many people.

42. We have concluded that it is not possible to consider that the sentence imposed in this case was unduly lenient. We repeat that the twelve year starting point was not the minimum available to the judge in this case. It might have been less. Despite the harm caused, when one takes account of the offender's genuine remorse, his youth, vulnerability and immaturity, and then considers his guilty pleas, the resulting sentence of six years and six months' detention in a young offender institution cannot be stigmatised as unduly lenient.

43. Mr Emlyn Jones, on behalf of the Solicitor General, properly recognised that our task is to consider the outcome in the round. Having reached that conclusion, and in particular taking account of the feature of this case, the judge's starting point could have been less, we conclude

that it is appropriate to refuse leave to the Solicitor General to make the reference.

44. We are very grateful to the advocates for their submissions, both written and oral. We repeat our deep sympathy to the family and our admiration for the way in which they have conducted themselves in the course of what must have been an extremely difficult hearing.

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