



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2023] HCJAC 52
HCA/2023/000536/XC

Lord Doherty
Lord Boyd of Duncansby

OPINION OF THE COURT

delivered by LORD DOHERTY

in

Appeal against Sentence

by

MELANIE GRIERSON

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Smeaton; John Pryde & Co SSC (for Bready & Co, Glasgow)
Respondent: Colquhoun AD; Crown Agent

15 December 2023

Introduction

[1] The appellant was indicted on a charge of causing serious injury to a mother and child and injury to two further children by driving dangerously contrary to section 1A of the Road Traffic Act 1988. Her plea of guilty to driving without due care and attention was not accepted by the Crown and the case proceeded to trial. She was convicted, the verdict of the jury being unanimous.

[2] The locus of the offence was a pedestrian crossing in Kirkton Street, Carlisle. The appellant was driving her Fiat 500 motor car. She was very familiar with the locus - a pedestrian crossing on a main road. She drove on the road almost daily and she was very familiar with the area. She was aware of the proximity of a primary school and of the possibility that schoolchildren might be using the crossing at the time of day when the offence was committed - approximately 3.10pm. She drove through a red light at the crossing and collided with the mother and her three children who were on the crossing. She first applied the brakes after the collision. The mother was carried forward some distance by the car to where it finally stopped some distance down the road. The children were scattered across the roadway. There was CCTV footage and dashcam footage of the incident which was played at the trial. In his report the sheriff indicated that anyone viewing the footage would struggle not to be shocked.

[3] The appellant was driving at 30mph when she went through the red light. It was raining very heavily and visibility was not good. She did not slow down at all approaching the crossing, notwithstanding white "Slow Down" markings on the road, her familiarity with the crossing and the locality, and the poor weather conditions. She claimed not to have seen the red light because she was looking in her rear view mirror as she was aware of an ambulance approaching some way behind her. The driver of the car behind the appellant was not distracted by the ambulance's approach. He slowed down as he approached the crossing. In his report the sheriff observed that it appeared that immediately prior to the collision the appellant seemed to have disengaged with the road in front of her for about 14 seconds.

[4] The mother and the oldest child (aged 10) suffered serious injuries, and the other two children (aged 9 and 6) suffered less serious injuries. All of them required hospital

treatment. The mother sustained multiple right-sided rib fractures with an associated shallow pneumothorax, a small fracture to her left upper arm, and abrasions to the right side of her face and her left temple. At the date of the trial, two years after the collision, she was still receiving on-going medical care management, including medication for pain in her ribs and arm. She suffered from migraines. The oldest child sustained multiple abrasions to his face and to the front, back and side of his head. He had a 2cm laceration to his temple and a 1cm laceration to his left cheekbone, both of which were sutured. He also had contusions to his right anterior shoulder, abrasions to his right knee, and contusions to his left tibia and fibula. He may be left with minor scarring. The middle child suffered abrasions to her head; and the youngest child sustained abrasions to her forehead, right knee and leg, and bruising to the bridge of her nose.

[5] The sheriff obtained reports. He sentenced the appellant to 12 months' imprisonment and disqualified her from driving for 3 years. He had regard to the Sentencing Council for England and Wales' Guideline *Causing serious injury by dangerous driving* as a check. The appeal is only against the imposition of the sentence of imprisonment.

[6] Counsel for the appellant submitted that a non-custodial sentence would have served all of the relevant sentencing purposes. The appellant had no previous convictions or penalty points. She had been driving for 33 years. She was genuinely remorseful. She led a pro-social life. She assisted with child care for her grandchildren. There was a low risk of further offending. She suffered from physical and mental health difficulties, namely fibromyalgia and anxiety. She received invalidity benefit. A community payback order with an unpaid work requirement, perhaps allied to a restriction of liberty order, would have been appropriate punishment. If a custodial sentence was appropriate, 12 months was

excessive, for the same reasons, and also because the sheriff had misapplied the sentencing guideline. He had double-counted the aggravation of causing serious injury.

[7] This is a sad case - for the victims and for the appellant. There were several mitigating factors, but culpability and harm were high. Even if the appellant was distracted by an ambulance some distance behind her, there is no escaping that she did not slow down at all on approach to the crossing - despite the poor weather conditions, the "Slow Down" markings on the roadway, and her familiarity with the location of the pedestrian crossing, the proximity of the school, and the possibility of children making their way home from school at that time of day. She went through the red light at 30mph.

[8] We are very mindful that in relation to the assessment of culpability the sheriff had the advantage of seeing and hearing the evidence at the trial. We are not persuaded that his assessments of culpability or harm overstated the position in any way. We are not convinced that he failed to give the aggravating and mitigating factors due weight. We are not satisfied that it would be right to interfere with his judgement that a custodial sentence was necessary, or that the appropriate sentence should be 12 months' imprisonment. In our view those conclusions are fully supported by checking that outcome using the sentencing guideline. In our judgement the culpability category here was closer to B than C, and in taking it as C the sheriff treated the appellant more favourably than he might have. The harm was category 2. The starting point for a category C2 offence is 12 months' imprisonment, and the sentence range is 26 weeks to 2 years. Here there were two very weighty aggravating factors - that there were multiple victims, and that they were particularly vulnerable road users. While there were also several significant mitigating factors, we do not think that they outweighed the aggravating factors. In our view the

sentence which the sheriff imposed was appropriate. It was required to mark the seriousness of the offence and the harm caused.

[9] The appeal is refused.