

Judicial Communications Office

Friday 16 December 2011

COURT OF APPEAL GIVES GUIDANCE ON HOW TO ESTABLISH THE FACTUAL BASIS FOR A PLEA OF GUILTY WHERE THERE IS A DISPUTE AS TO THE CIRCUMSTANCES

Summary of Judgment

The Court of Appeal today gave its reasons for dismissing an appeal against sentence by James John Stewart Caswell for causing grievous bodily injury by dangerous driving. The Court gave guidance on assessing the culpability of an offender thereby ensuring consistency in sentencing.

On 26 May 2009, James Caswell ("the applicant") drove his mother's car to the car park at the Northgate Shopping Centre, Glengormley. A number of his friends in two cars were there together with Philip James who was on his motorbike. They heard a loud engine noise and the screeching of tyres. They saw the applicant's car approaching at approximately 40 miles per hour. The car slid out of control, swerved and struck Mr James' motorbike, pinning him to one of the cars. Mr James sustained a crush injury and lacerations to the lower leg. The applicant claimed his brakes failed but the car was examined and it was established that the braking system was in working order.

Prior to the applicant pleading guilty, the prosecution indicated that it contended that his speed was grossly excessive for the car park and that he was attempting a handbrake turn to show off in front of his friends. The defence asked the prosecution to accept that there had been no deliberate attempt at a handbrake turn but that the applicant had used the handbrake in a foolish attempt to slow down the car. The prosecution and defence were unable to agree the basis of the plea and after it was entered they went to see the trial judge in chambers. While the trial judge indicated that his primary concern was the speed, he did not expressly resolve the issue of whether the applicant was showing off (which would have placed the case in a higher category for sentencing).

The Lord Chief Justice, delivering the judgment of the Court, referred to the principles that should be followed where the defendant pleads guilty but disputes the prosecution case. He said that the differing factual bases put forward in this case were material to the sentencing outcome. If the court had concluded that the applicant had been showing off the starting point would have been between 2 and 4 ½ years. The outcome would therefore have been a sentence considerably in excess of that imposed. The guiding principles showed that the disputed factual basis of the plea ought to have been decided in open court.

The Lord Chief Justice said that guideline cases are designed to assist sentencers in assessing the culpability of the offender and to promote consistency in sentencing having regard to the offender's culpability and the harm caused. He said that in this case the culpability of the

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offender lay not just in the fact that he drove at a speed which was clearly far in excess of that which was appropriate in a shopping centre car park but also in his decision to use his handbrake to bring his car to a halt close to the victim and the other cars. The Lord Chief Justice noted that guideline cases are not to be interpreted like statutes and it was therefore not necessary to determine whether the applicant's manoeuvre was expressly set out in the guideline cases before giving it appropriate weight in the sentencing decision.

The Lord Chief Justice said that the Court wanted to comment on two factors which the applicant relied on in mitigation. The first was his inexperience. The Court of Appeal accepted that inexperience may be a mitigating factor for a driver who fails to appreciate extreme danger which a more experienced driver would have identified but it did not consider that inexperience contributed significantly to the circumstances of this collision. The Lord Chief Justice said that the applicant would have been well aware that he was going too fast and his decision to use his handbrake plainly gave rise to a real danger that he would lose control of the car.

The second factor was whether the Court should draw a distinction between cases in which grievous bodily injury was sustained and those cases in which death is caused. The Lord Chief Justice said that the Court approved an earlier statement which said that the offence of dangerous driving is aimed at really bad driving and the culpability of that driving can rarely be judged simply by regarding the fact that serious injury rather than death was the consequence.

The Lord Chief Justice said that taking into account the culpability of the applicant, the Court considered that a starting point on a contest in excess of two years was entirely appropriate in this case. The Court did not consider that the sentence could be criticised and for those reasons dismissed the appeal.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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