

ENGLAND AND WALES / JUDGMENT

R v Barry Rossiter

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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)

MR J FITZGERALD appeared on behalf of the Appellant

J U D G M E N T LADY JUSTICE ANDREWS: 1. 2. 3. 4. 5. On 11 June 2024 in the Crown Court at Canterbury, the appellant, then aged 24, pleaded guilty to one count of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861 which was an alternative count to a count of attempted murder. The prosecution offered no evidence on the alternate count and a verdict of not guilty was entered pursuant to section 17 of the Criminal Justice Act 1967. On the same occasion the appellant pleaded guilty to a count of assault on an emergency worker. A count of causing serious injury by dangerous driving was ordered to lie on the file against him in the usual terms. On 11 October 2024, the appellant having been found to be a dangerous offender, was sentenced by His Honour Judge Simon James, the Recorder of

Canterbury, to an extended sentence of 12 years, comprising a custodial term of 10 years and an extended licence period of two years in respect of the offence of causing grievous bodily harm, with three months concurrent in respect of the assault. He appeals against sentence by limited leave of the single judge on grounds that the judge took too high a starting point and that insufficient credit was given for the guilty pleas in deciding the length of the custodial part of the extended sentence. The factual background can be summarised as follows. On 26 January 2024 at around 3.00 pm, a uniformed police officer wearing a hi-visibility jacket was on duty in a residential area of Ashford conducting speed tests. The officer, PC Adam Staughton, noticed a Vauxhall Vectra driving at 43 mph in a 30~mph zone. He recorded the speed of the vehicle which then braked with force. PC Staughton stepped into the road and raised his hand for the vehicle to stop, but as he did so, the vehicle accelerated and drove straight at him. The officer, realising he was going to be struck, decided to jump in the hope that he would not go under the vehicle. He went onto the bonnet of the car, and hit the windscreen which broke upon impact. Some of the incident was captured on PC Staughton's body-worn camera. Another police officer who was present radioed for assistance, and PC Staughton was taken to hospital. Meanwhile the vehicle, which was being driven by the appellant, sped off, driving at excessive speeds and at times on the wrong side of the road, at one point mounting the pavement. It failed to stop after colliding with another car which contained three elderly passengers. The car was eventually driven up a rural track and abandoned after being set alight. The appellant and his male passenger walked away from the scene and then ran into some woods to the rear of Nickley Wood travellers' site. The appellant and his passenger were subsequently identified, and the appellant was arrested. He made no comment in interview. At the time of the incident the appellant was uninsured and had only a provisional driving licence. The car he was driving did not belong to him, although he told the author of the pre-sentence report that it was made available for communal use by members of his family at the travellers' site at which he then lived. 6. 7. 8. 9. 10. 11. PC Staughton suffered serious physical and psychological injuries, in particular a fracture to the bone that forms the socket to the left hip joint and a fracture to the lower part of the left pelvic bone. He had to undertake residential physiotherapy for two weeks. After returning to work he was subsequently diagnosed with PTSD and depression and had to attend a police rehabilitation centre for a further stint due to ongoing issues with his injuries. The count relating to the assault on an emergency worker related to an occasion when the appellant was being returned in a police vehicle from a hearing in Medway Magistrates' Court. He was handcuffed, and a police officer, DC McCreery, was sitting in the back of the vehicle with him. Another officer was driving. The appellant became frustrated and told the officers that he was likely to "kick off". He then became abusive and aggressive. He told the officers that it would take both of them to restrain him and that they would need firearms to control him. The appellant's seatbelt came undone and when DC McCreery attempted to restrain him, the appellant attempted to bite him. The officer driving the van diverted to a local police station and summoned assistance. The appellant was then arrested for the assault. He accepted threatening to bite DC McCreery's fingers, but said he did not mean it. The judge had the advantage of a balanced pre-sentence report which described the appellant as presenting as somewhat immature during his interview. The author described him as displaying "clear remorse for his actions" in relation to the offence of causing grievous bodily

harm, but also as displaying some minimisation. She said that he attributed some blame to the victim, suggesting that he "hopped out in the road out of nowhere" and that he had no time to stop the car, and denying that he had accelerated towards the officer (despite the fact that the officer's account that he did so had been corroborated by several eyewitnesses.) The appellant said that he had panicked and that was why he drove off after the accident. He admitted to the author of the pre-sentence report that he had consumed alcohol and cocaine with friends on the previous evening and had had hardly any sleep. He had consumed cannabis during the day. He accepted that he was driving at excessive speed. The author of the report said that the appellant did not display any hostility or negative attitudes towards the police or law enforcement generally, but recorded the appellant as saying that he would have likely behaved in the same manner if it had been a member of the public. In the light of that remark it is hardly surprising that the judge decided that he met the statutory test for dangerousness, that matter having been addressed in some detail by the author of the pre-sentence report who said that he did. As regards the appellant's understanding of the impact on the victim, the author of the report said that he said that he was "very sorry" and that he would "change it if I could" and that he regretted his actions. She assessed him as displaying good insight into the immediate and potentially enduring psychological harm which would likely have been caused to the police officer. On the other hand, she said he did not appear to acknowledge the full extent of the physical harm caused or the potential for fatality and largely focused 12. 13. 14. 15. on his explanation that he did not hit the officer purposefully. He said that he was in the process of writing a letter to the officer to express his remorse. As Mr Fitzgerald, who represented the appellant both at the sentencing hearing and before us this morning explained, the appellant has limited writing and reading skills because of his disrupted education and his diagnosis of ADHD, but he is doing his best to help that situation by his engagement in prison with the Shannon Trust, a trust which helps young people in his position to improve their reading and writing. Mr Fitzgerald was unable to tell us whether the appellant had in fact written a letter to express his remorse. In terms of the assault, the author of the report said that the appellant did not understand how he could be charged with an assault when there was no physical violence. He accepted telling the officer in the van that he would bite his finger because the officer had pointed at him in his face which he felt was a breach of his personal space, and said that his remark was triggered by feelings of belittlement and disrespect. The author of the report said that in her assessment the offence was motivated by the appellant's immaturity and lack of emotional intelligence in dealing with perceived conflict in a pro-social manner. The appellant had a previous conviction in 2019 for offences of wounding with intent to cause grievous bodily harm and assault occasioning actual bodily harm which had resulted in a sentence of three years and six months' detention in a young offender institution. His licence expired on 22 July 2023. Those offences were committed at a party when he stabbed and punched a 15-year-old who had slapped the bottom of the girlfriend of one of his friends. He was resistant to discussing those offences with the probation officer who was preparing the pre-sentence report. She assessed him as being susceptible to bad influences from his peers and noted that he had previously acknowledged that his sometimes felt the need to show off to others. Whilst he had complied with his licence conditions, his previous supervising officer described him as "surface compliant" with low maturity and his engagement

as “minimal”. He had presented as evasive and unwilling to discuss certain aspects of his life, including his ADHD, drugs and alcohol consumption, his friends and associates, but on the other hand he had routinely claimed to be motivated to remain out of prison. The pre-sentence report recorded that the appellant had had a disrupted education after his diagnosis of ADHD as a child, but that since being remanded for these offences he had obtained a trusted position as a wing cleaner and had applied for a role as a violence reduction representative. He had also, as we have said, become engaged with the Shannon Trust for support in improving his reading and literacy skills. He did not always take his prescribed medication for ADHD, preferring instead to self-medicate with cannabis. His insight into the part played by alcohol and drugs in his offending was minimal. However the author of the pre-sentence report said that it was to his credit that he had indicated a willingness to undertake work to address his offending behaviour so as to ensure that the risk of further violent offending is reduced. 16. 17. In sentencing the appellant, the judge found, as he was entitled to on the evidence, that the appellant chose to deliberately speed up and run over PC Staughton. He said it was more by luck than judgment on his part that the officer survived. The judge found the victim to be particularly vulnerable because he was a serving police officer undertaking his public duty, and the use of the car equated to the use of a highly dangerous weapon to cause injury. Those were two factors which enabled the judge to place the offence into Category A for culpability. The judge placed the offending into Category 1 for harm. In doing so he said that even if the officer's injuries would not suffice in themselves to put the offence into Category 1, (which he said was debatable because of the long-term impact on his daily life and ability to work) the aggravating features he identified sufficed to elevate the offending into that category. Those features were: his previous conviction for wounding with intent, the fact that the index offence was committed under the influence of drugs, the fact that he had neither valid insurance nor a full driving licence, the circumstances of the other offence which provided additional evidence of his apparent hostility to the police and tendency to unpredictable and violent behaviour, and the fact that he drove dangerously in the aftermath of the incident and set fire to the car in an effort to destroy evidence. 18. Although the judge made no specific reference to this, the starting point for a Category A1 offence is 12 years' imprisonment with a range of 10 to 16 years. The starting point for a Category A2 offence is seven years' imprisonment and the top of the sentencing range in that Category is 10 years. 19. The judge then said this: "The account provided by you to the author of the pre-sentence report is self-serving, entirely inconsistent with your plea of guilty and obviously and manifestly false. Your attempts to minimise your culpability demonstrate not only a lack of genuine remorse but are very concerning when assessing, as I am obliged to do, the risk you pose of causing serious harm by reason of the commission of further offences." The judge made it clear that he was reflecting the overall criminality in the sentence passed for the offence of causing grievous bodily harm. He said that if this were a premeditated offence committed by a mature adult it seemed to him that there would be compelling grounds to take a starting point towards the very top of the applicable range. He said that he considered the case as one of particular gravity reflected not only in the features of culpability but by a significant number of aggravating features. He referred to the guilty plea which came after the plea and trial preparation hearing (at which the appellant had claimed that he was not even in the car.) 20. The judge accepted that the plea was to a lesser

charge than attempted murder but said that because of the lack of genuine remorse he did not consider that this factor should entitle the appellant to a reduction significantly greater than 15 per cent. He then said that he was reducing the starting point for the custodial term to reflect the appellant's age, lack of maturity and his ADHD (though noting that the appellant was consciously not taking his medication for that condition) to 12 years and then reducing it to 10 years to take account of the guilty plea.

21. Mr Fitzgerald accepted that the officer was properly described as obviously vulnerable due to his circumstances. That was a feature of higher culpability. There was of course the use of the car as a weapon which was another feature of high culpability. But that, he submitted, was insufficient to take the starting point outside the range. Mr Fitzgerald submitted that there was no basis for elevating the harm into the higher category either. He contended that there had been an element of double-counting for the fact that the victim was a serving police officer and that it did not justify moving the starting point from seven to 12 years. He submitted that there ought to have been some balancing adjustment to reflect the lesser culpability feature of the appellant's ADHD being linked to the commission of the offence instead of it being treated at the later stage as a mitigating feature. He also observed that the judge had appeared to turn it into an aggravating feature because the appellant had not been compliant with his medication. 22. 23. This was a particularly serious offence, as the judge said, and we have to take into account the fact that he was reflecting the overall criminality of the appellant's behaviour in the sentence that he was passing for the more serious of the two offences. We consider that there was ample justification for the judge to take this case into Category 1A for the reasons that he gave, even if one ignored any double-counting on the basis that the victim was a serving police officer. We also consider that on a proper interpretation of his sentencing remarks the judge did treat the ADHD as a mitigating feature but tempered the amount of mitigation afforded to that feature because the appellant was deliberately failing to take his medication. However, we acknowledge the fact that by taking the matter into Category 1A the judge was adding five years to the starting point for a Category 2A offence in order to reflect all of the aggravating features that he had identified. It is difficult to understand how, having done so, the judge then reached a notional sentence after trial, before giving credit for the guilty plea, of 12 years. In order to have done that he would have had to have elevated the starting point in Category 1A from 12 years by some distance, before giving credit for the mitigating features which he identified.
24. Moreover, as Mr Fitzgerald submitted, there was evidence of other mitigation which the learned judge did not take into consideration. Mr Fitzgerald submitted that on a proper and balanced reading of the pre-sentence report the appellant had actually taken active steps towards addressing his offending behaviour and the causes of it. There was an element of genuine remorse, albeit that there was limited insight, and albeit that the judge may well have been entitled to take into account or weigh against the genuine remorse the fact that the appellant was attempting to minimise responsibility for his actions by suggesting that it what happened was an accident rather than the result of his deliberate behaviour. 25. 26. 27. 28. It seems to us that there is some force in what Mr Fitzgerald has submitted, serious

though this offending was. We cannot discern any justification for the judge departing upwards from the starting point of 12 years before giving appropriate credit for mitigation. There is also force in Mr Fitzgerald's argument that the judge should have given more credit for the guilty plea. It is clear from looking at the case records that about four weeks or so after the plea and trial preparation hearing, in May 2024, an offer was made to plead guilty to the alternative charge of causing grievous bodily harm with intent and the prosecution then indicated that they needed to take time in order to see whether that plea was acceptable. They indicated that it was acceptable on 24 May. The trial was still some way off, in September. In those circumstances it was more appropriate for the judge to have given credit of 20 per cent for the guilty plea rather than 15 per cent. There is therefore a need to make some adjustment to the sentence in order to take into account the full mitigation and the adjusted credit for the guilty plea. Having done the best that we can, we consider that the notional sentence after trial before credit for the guilty plea would have been in the region of 11 years, and that after giving the proper discount for the guilty plea and the time at which it was offered (which is the appropriate time) that would reduce the custodial element of the sentence to one of nine years. That is only a reduction of 12 months to the custodial element, and the reason that it has been given is because we consider that the judge erred in principle rather than because of any mis-categorisation. This was, as we stress, very serious offending and on any view merited a lengthy sentence. There is no complaint about the fact that the judge found the appellant to be dangerous and passed an extended sentence, nor is there any complaint about the length of the extended licence period. 29. To that extent, therefore, we allow this appeal. We reduce the custodial element of the extended sentence to one of nine years and pass an extended sentence of 11 years comprising nine years custodial element and two years extended licence. 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

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