

JERSEY / JUDGMENT

AG v McInnes [2000]

JRC 43 (07 March 2000)

[2000] JRC 43

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JUDGMENT

THE DEPUTY BAILIFF: Cases of causing death by dangerous driving or motor manslaughter are some of the most difficult to come before the Court. On the one hand the conduct of the defendant has led to the loss of a life with all the pain and anguish which that brings with it. The Court would like to take this opportunity of expressing its sympathy for the family of Mr. Saussey. On the other hand, no sentence can compensate the family of the victim for the loss they have suffered; the defendant did not intend the tragic consequences and there is often considerable mitigation. In this connection we would wish to quote from the judgment of the Court of Appeal in England in the case of R -v- Rayner

(1994) 16 Cr. App. R.(S) 583 where Lord Taylor CJ said this: "We wish to repeat the sentiments we expressed elsewhere in our judgment in Shepherd and Wernet. No court can bring back to life those who have been killed on the roads. We understand the feelings of those relatives and friends of the deceased who believe that there ought to be a correlation between the loss of life and the length of sentence. We also understand that no length of sentence will ever satisfy those who lose loved ones that a proper correlation has been made. We must emphasise that this Court cannot be persuaded by campaigns or by clamour to pass extremely long sentences where the criminality of the offender does not justify it. This Court is concerned primarily with the criminality of the person who has caused the death. The fact of the death is, of itself, a factor in contributing to the length of sentence which Parliament has ordained should be passed. But essentially we have to look at cases in the light of the offender's criminality. That is why, in the case from which we have quoted, we stressed that the length of sentence will very much depend upon the aggravating and mitigating circumstances in the particular case, the extent of the carelessness or dangerousness, and the amount that the offender is over the limit in a case involving excess alcohol." In the case of Hall -v- AG

(1996) JLR 129 , the Court of Appeal said this at p.162: "We concur with the view expressed by the Royal Court that in the past, sentences imposed for convictions of motor manslaughter, in particular where alcohol was a factor, have been too low and ought to be significantly increased in accordance with the guidelines given by the Court of Appeal in England." It is

clear from the judgment of the Court of Appeal and the Royal Court in Hall that they were concerned primarily with cases of dangerous driving after the consumption of alcohol. Nevertheless the courts in England have also increased sentences in cases where alcohol is not a feature, in order to reflect a general feeling that the seriousness of an offence which leads to a loss of a life had not been reflected in some of the sentences passed previously by the courts. The Court's duty is to look at the aggravating and mitigating factors in each case. The classic statement of such factors is contained in the case of R -v- Boswell

- (1984) 3 All ER 363. We do not propose to read the well-known passage of the judgment of the Lord Chief Justice which we have had cited to us today, but we have considered it very carefully. We do, however, conclude that Boswell, whilst still to be relied upon for aggravating and mitigating factors, is no longer to be relied upon on questions of the quantum or amount of a sentence. The changes in the legislation since then and the comments made in cases such as Hall make it clear that times have moved on since the case of Boswell which was in 1984. The only aggravating factor alleged by the Crown in this case is that of grossly excessive speed. This was an area with a 30 mph speed limit. The conditions were wet and greasy. Witnesses described how they felt it appropriate to drive at no more than at 25 - 30mph. Yet, despite being a salesman in the motor trade, Mr. McInnes drove at some 57mph and had accelerated rapidly to reach that speed. In addition he appears to have taken no heed on the first occasion that the back of his car skidded towards the near side and he did not drop his speed as a result. He then skidded again, spun sideways and smashed into the unfortunate Mr. Saussey, who was cycling the other way close to his correct kerb. We find that this was a case of driving at grossly excessive speed for the road and the conditions. However, we accept that there were no other aggravating features, in particular there was no question of any consumption of alcohol which is a seriously aggravating factor. So what are the mitigating factors? First, Mr. McInnes has pleaded guilty and he pleaded guilty at an early stage in the proceedings and we give full credit for that. Secondly, it is clear from the Probation Report that he has suffered considerable remorse and still feels that way. Thirdly, he does not have a previous record for bad driving; there are some previous motoring offences but they were not to do with the nature of his driving. Counsel, who has said everything that could possibly be said on his behalf, has suggested that this was a one-off momentary lapse. We are not inclined to go that far. This was conduct which continued over a period, albeit a short one, and Mr. McInnes took no notice of the warning skid. However, we accept that it was certainly not prolonged. Finally we have had the opportunity of looking at a number of references which were handed up to us. These made it clear that - as we have already said - Mr. McInnes has suffered considerable remorse, continues to do so and indeed has much to offer for the future. Nevertheless in the light of the all the circumstances we are unable to accede to the suggestion by Mr. Taylor that this can be dealt with by way of a non-custodial sentence. This was a bad piece of driving in poor conditions and the speed at which Mr. McInnes drove was far too fast in the circumstances. Nevertheless we think that

the sentence moved for by the Crown is too long. A sentence of four years following a guilty plea and the other mitigation we have described would suggest a sentence of the order of some six years had this been a not guilty plea. That would be out of all proportion to the other cases to which we have been referred. Doing the best we can and taking account of all the circumstances - stand up, please, Mr. McInnes - the court is going to pass a sentence of two years' imprisonment and you will be disqualified from driving for a period of five years. Authorities R.-v-Boswell

(1984) 3 All ER 363. Attorney General's References Nos. 14 & 24 of 1993 (1993) 15 Cr. App. R.(S) 640. Attorney General's References Nos. 24 & 45 of 1994 (1994) 16 Cr. App. R.(S) 583. A. G.-v-Hall (2 nd May, 1995) Jersey Unreported; (1995) JLR N.25. Hall-v-A. G.

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