



THE COURT OF APPEAL

Neutral Citation: [2024] IECA 240

Record Number: 245/2023

Birmingham P.

McCarthy J.

Burns J.

BETWEEN/

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC
PROSECUTIONS**

RESPONDENT

- AND -

BRIAN KELLY

APPELLANT

**JUDGMENT of the Court delivered on the 22nd day of July, 2024
by Ms. Justice Tara Burns**

1. This is an appeal against severity of sentence. The appellant was charged with dangerous driving causing death, contrary to s. 53(2) of the Road Traffic Act 1961, as amended ('the 1961 Act') relating to the death of Ms. Claire Hennessy which occurred on 18 October 2008. He entered a plea of guilty, at an early stage in the court proceedings, on 6 October 2009.

2. On 15 December 2009, the appellant was sentenced to a 2 year term of imprisonment, the entire term of which was suspended for a period of two years, upon certain terms and conditions. He also was disqualified from holding a driving licence for life.
3. The appellant sought an extension of time to appeal the sentence imposed upon him which was granted by the Court on 9th May 2024 (see *DPP v. Brian Kelly* (2024 IECA ??)). This application arose as a result of a licence restoration application intended to be brought by the appellant in December 2021 pursuant to s. 29(2) of the 1961 Act. A difficulty arose with respect to this application as it appears that s. 29(4)(b) of the 1961 Act only applies to determinate sentences.

Background

4. On the night of 17 October 2008, the appellant was at home. He already had been consuming alcohol, before a group of friends, to include the deceased, called to his house. The group continued drinking. After a period, the deceased indicated that she wanted to go to the shop to get cigarettes. The appellant volunteered to drive her to a nearby 24 Hour Service Station.
5. On the return journey, the appellant passed the entrance of the estate where he lived. Shortly afterwards, on a left bend in the road with a speed limit of 50km/h, the appellant's vehicle crossed onto the incorrect side of the road and mounted the footpath. The vehicle proceeded onto a grass/clay mound and became airborne for a distance, before colliding with the outer block wall of an apartment building.
6. Emergency services were called to the scene. The deceased showed no vital signs at the scene and was later pronounced dead.

7. The appellant was also seriously injured. He spoke to Gardaí present who detected a smell of alcohol from him and he verbally confirmed to them that he had consumed alcohol. A blood sample taken from the appellant revealed a concentration of 172 milligrams of alcohol per 100 millilitres of blood.
8. Two residents from the area, described hearing a car approaching the area at speed with the engine roaring, after which they heard a loud bang.
9. A Garda Forensic Collision report noted that the weather was dry but the road surface was wet after a recent mist shower; that the appellant's vehicle was assessed to be in good pre-accident condition but had suffered extensive damage in the collision; that the bend radius on which the appellant lost control of his vehicle was 178.44 meters; and that the appellant's vehicle had been travelling at a minimum speed of 71.22km/h before it became airborne off the grass/clay mound. The report noted that speed and alcohol intake were the sole reasons for the fatal incident.
10. The appellant was arrested on 8 December 2008 and detained pursuant to s. 4 of the Criminal Justice Act 1984. He was interviewed on three occasions. He was unable to recall driving at, or immediately before, the collision but confirmed he had been drinking at home and that he drove the deceased to get cigarettes.

Ground of Appeal

11. In summary, the error in principle which the appellant identifies is the imposition of a lifetime driving disqualification upon him in the circumstances of the case.
12. Whilst it accepted by Counsel on behalf of the appellant that the imposition of a lifetime disqualification order was an option available

to the sentencing judge, it is submitted that the jurisprudence relating to such orders establishes that such an option should only be availed of in exceptional circumstances. Reference was made to the decision of the Court of Appeal in *The People* (at the suit of the *Director of Public Prosecutions*) v. *Moran* [2019] IECA 5, where Birmingham P. stated:-

"In the Courts experience, disqualification for life from driving, even in the case of dangerous driving causing death are very unusual and if they are encountered at all, it is normally in the case of repeat offenders who have persisted in driving and further offending when already subject to a disqualification order".

13. In addition, reference was made to dicta from the appeal courts to the effect that disqualification orders are not to be imposed as a form of punishment but rather reflect '*a finding of unfitness of the person concerned to hold a driving licence*' per Walsh J. in *Conroy v. Attorney General* [1965] IR 411 and applied in *O'Brien v. Coughlan* [2015] IECA 245.
14. In the instant case, it is argued, that in light of the fact that the appellant did not have any previous convictions in respect of road traffic matters, the sentencing judge erred in imposing a lifetime disqualification order and that this course incorrectly amounted to a punishment rather than a reflection of his unfitness to drive.

Discussion and Determination

15. In light of the fact that lifetime disqualification orders are only appropriately imposed in exceptional cases usually involving repeat offending (which does not arise in the appellant's case), and that disqualification from driving must not be utilised as a punishment, we

are of the opinion that the sentencing judge erred in imposing a life time disqualification.

16. In light of this identified error in principle, we will quash the sentence imposed by the sentencing judge and proceed to re-sentence the appellant as of today's date

Re-Sentence

17. The offending behaviour in this matter is very serious. A young woman, Ms. Claire Hennessey, with her entire life ahead of her, aged only 24, had her life ended and was taken from her family as a result of the appellant's unlawful driving. Not only was he significantly intoxicated, the appellant's driving was extremely dangerous in that it can be inferred he was driving at a considerable speed in a residential area and completely lost control of the car.
18. Had we been imposing sentence closer to the time of the offending behaviour, a custodial sentence would be all but inevitable. However, as almost 16 years have passed since this incident and over 14 years since sentence was imposed, it would simply be unjust to impose a term of imprisonment at this stage.
19. We are of the opinion that a substantial period of disqualification from driving was necessary in this case and while we agree with Counsel for the appellant that the imposition of a life time ban was inappropriate in the circumstances of the case, a disqualification of a significant period of time must be imposed to reflect the appellant's unfitness to drive on the night in question.
20. Accordingly, in light of the time which has elapsed since sentence was imposed and having regard to how the appellant has conducted himself over that time, we will follow the sentencing judge and

substitute a two year term of imprisonment which we will suspend for two year on the same terms and conditions as imposed by the sentencing judge and will impose a 20 year disqualification from driving on the appellant dating from the time of the original sentence.