



THE COURT OF APPEAL

[193/17]

The President

Edwards J.

Hunt J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

MARTIN MAUGHAN

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 22nd day of October 2018 by Birmingham P.

1. This is an appeal against severity of sentence.

2. The sentences under appeal are sentences of 5 years' imprisonment imposed in respect of each of two counts of endangerment. The sentences in question were imposed on 14th June 2017 at the Circuit Court in Castlebar and followed a conviction after a contested trial.

3. The background to the matter is to be found in the fact that on 11th February 2016, at approximately 5.50pm, Garda Drury found himself in a patrol car at Kilkelly Road, Kiltimagh, County Mayo, when he observed, the appellant, Martin Maughan standing alongside a silver People Carrier speaking to the occupant. There was a green Vauxhall Vectra facing in the opposite direction and both vehicles were obstructing road users from passing by. Garda Drury got out of the patrol car in which he was travelling and walked towards Mr. Maughan and called his name. At that stage, Mr. Maughan jumped into the Vauxhall Vectra and reversed the vehicle at speed, mounting the footpath, almost colliding with two ladies who were out for an evening walk and were wearing high visibility jackets. Mr. Maughan then drove off at speed in the direction of the N17, the main road. At Coill Trasna, he overtook a vehicle on a continuous white line at speed. He continued to drive at speed and overtook a vehicle going up a hill with oncoming traffic. At Canbrack, Kiltimagh and Derrynanad, Kiltimagh, he took a sharp bend on the wrong side of the road, forcing oncoming vehicles to veer onto the verge. Mr. Maughan was travelling at speeds in excess of 150km per hour, and at Derryclaha, Kiltimagh, almost lost control of the vehicle due to the excessive speed at which he was travelling. He continued to drive at speed off the minor road onto the main N17, and as described by Garda Drury, showed total disregard for other road users and did not slow down. At that stage, Garda Drury lost sight of the vehicle. Subsequently, on 15th April 2016, Mr. Maughan was arrested and detained and denied the allegations.

4. The first of the two endangerment counts relates to reversing onto the footpath in proximity to the two female pedestrians. The second endangerment count related to driving at excessive speed around a sharp bend on the incorrect side of the road.

5. In terms of the background and personal circumstances of the appellant, the sentencing Court was told that he was 39 years of age, was one of a family of nine and that he was a member of the Traveller community. The Court heard that Mr. Maughan had 85 previous convictions recorded between 2003 and 2014. Of these, 53 were for traffic offences, 11 were offences under the Theft and Fraud Offences Act, six were for criminal damage, three for assault, two for possession of knives, one for s. 5 of the Non-Fatal Offences against the Person Act, for which he received a sentence of 11 months, which was the most substantial sentence that was imposed on him, one for endangering traffic, that also was dealt with by way of an 11-month sentence for this, and there was one offence of escaping from lawful custody. The Court heard that he was subject to a number of disqualification orders at the time these offences were committed. In the view of this Court, the fact that he was disqualified is a significant aggravating factor.

6. In cross-examination by defence Counsel, the investigating Garda agreed that he knew Mr. Maughan and his family and he was aware that the background was a dysfunctional and disadvantaged one and was prepared to accept that Mr. Maughan had difficulties with alcohol and substance abuse.

7. In the course of his sentencing remarks, the Judge indicated that so far as the endangerment offences were concerned, he placed the headline sentence for these offences "as close to the top of the scale as could be" and he then proceeded to nominate a headline or pre-mitigation sentence of six years. The Judge referred to the fact that nobody was injured, adding that that was no thanks to Mr. Maughan. He referred to an apology that had been tendered to the Garda and to the dysfunctional and somewhat chaotic background of the appellant. He referred to the fact that the Probation and Welfare Services were pessimistic as to their future role, quoting them as saying that the risk of reoffending was "now very high".

The Judge concluded by saying that he had identified the mitigating factors and that they entitled Mr. Maughan to "a certain amount of credit" and he then proceeded to impose a sentence of 5 years on each, the sentences to be concurrent.

8. On behalf of the appellant, it is said that the Judge erred in placing each of the endangerment offences "as close to the top of the scale as could be". It said that the driving was undoubtedly very dangerous and, indeed, was taken out of the category of ordinary dangerous driving and into the endangerment category, but it said that the facts were not at the most extreme end of that offence.

9. The appellant has referred to a number of comparators. He has drawn attention to the case of DPP v. McInerney [2016] IECA 378, where this Court was required to deal with an appeal from a sentence of six years with two suspended in respect of a somewhat similar offence of endangerment involving dangerous driving. In that case, the appellant also had a poor record with 67 previous convictions in his case. The appeal succeeded to the extent that the Court reduced the sentence to one of four years and suspended the final year to further incentivise rehabilitation. It is to be noted that that case was dealt with on a plea of guilty.

10. So, too, was the case of DPP v. O'Driscoll [2017] IECA 91. The appellant points out that in that case, the Court identified a headline or pre-mitigation sentence of five years as appropriate for the endangerment aspect. The Court in that case was dealing with an appeal against an aggregate sentence of 12 years. It said that the facts of O'Driscoll, where the headline pre-mitigation sentence of 5 years was identified for the endangerment offence, were significantly worse than the facts in the present case.

11. In the case of DPP v. Cash [2015] IECA, the Court dismissed an appeal against severity. The sentence there was six years with 18 months suspended. In the course of judgment delivered by Sheehan J, the Court said that it had given serious consideration to the question of increasing Mr. Cash's sentence. The driving, which involved an incident on the M50 and which is set out at paras. 12 and 13 of the Court's judgment, was exceptionally bad and involved collision with three vehicles. However, on the other side, it too was a case that was dealt with in the Circuit Court on a plea of guilty.

12. In the Court's view, the Judge was correct to view these offences as being very serious ones, though in saying that the offences were as close to the top of the scale as could be, he went further than he needed to. Serious as the facts of the case were, one can readily envisage offences where the facts would be more serious still.

13. There are present in this case a number of aspects which give rise to very serious concern, the fact that the appellant had 53 previous convictions recorded under the Road Traffic Act, including an offence of endangerment, and the fact that he was driving when subject to a number of distinct disqualification orders. It was a case where very little was available to the appellant by way of mitigation. The fact that the case was contested meant that the valuable mitigation which would have been provided by a guilty plea was not available.

14. This Court has, on a number of occasions, stressed that simply because the Court, had it been called on to sentence, might have imposed a somewhat different sentence than the one actually imposed, does not provide a basis for intervention.

15. The Court accepts that the sentences imposed in Castelebar were severe ones and analysis of sentence imposed in other endangerment cases suggests that the Judge might have decided on a somewhat lower sentence. That is, however, not the point. The question, rather, is whether the sentences fell outside the available range.

16. This Court has given careful consideration to that question. Having regard to the aggravating factors referred to, to the multiplicity of previous road traffic offences, to the fact that the driving occurred at a time when the appellant was the subject of multiple disqualification orders and having regard to the absence of significant mitigation, the Court has not been persuaded that the sentence, while severe, was so severe as to fall outside the available range and thus amount to an error of principle.

17. In the circumstances, the Court will dismiss the appeal.