



THE COURT OF APPEAL

Birmingham J.
Edwards J.
Hedigan J.

Record No: 2016/139

THE PEOPLE AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

V

SYED FAHAD ALAM

Appellant

JUDGMENT (ex tempore) of the Court delivered on the 27th of November 2017

by Mr. Justice Edwards.

Introduction

1. The appellant appeared before Cork Circuit Criminal Court charged with one count of careless driving causing serious bodily harm which occurred on the 20th of September 2015. A guilty plea was entered on the 18th of April 2016 and evidence was heard on the 12th of May 2016.

2. The appellant was sentenced on the 12th of May 2016 to 12 months imprisonment, suspended in full and received a disqualification from driving for a period of four years. The appellant now appeals solely against this disqualification and seeks to argue that there were special reasons which would have justified the court at first instance in declining to make a disqualification order or in specifying a period of disqualification of less than four years.

The Facts

3. Around 3 a.m. on the 20th of September 2015 the appellant was driving his taxi on South Mall in Cork City, when he struck the injured party, Ms Michelle Austin. Garda Patricia Devine told the court that the injured party appeared to be trying to flag down a taxi and was standing in the middle of the road when she was struck. The appellant co-operated fully with the investigation and pleaded guilty early at the first available opportunity. The appellant appeared not to have seen the injured party and there was no suggestion of excessive speed, alcohol or use of a mobile phone on his part.

4. The injured party was seriously injured. She was rendered into a coma and was put on life support before undergoing lifesaving brain surgery. Though she has made a slow but constant recovery, she nonetheless has difficulties with her left hand and there are question marks over her prognosis. She is traumatised but bears the appellant no ill will, as evidenced by her suggestion that he only receive a fine or other minor punishment.

The Appellant's Personal Circumstances

5. The appellant was 31 at the time of sentence and had no previous convictions. He had been driving in Ireland for seven years and had worked in security for six years before commencing work as a taxi driver three years before the incident. As stated, he co-operated fully and pleaded guilty at the first opportunity. He was extremely remorseful and appeared to be visibly traumatised by the incident when he appeared voluntarily at the station for questioning.

The Sentence Imposed

6. In passing sentence the sentencing Judge made the following remarks:

The accused, as I said, has pleaded guilty. There are none of the regular aggravating factors. There's no drink, no excessive speed, no holding of a mobile. The car appears to have been in good order and the circumstances of the carelessness are that a driver, indeed the holder of a PSV licence, driving in a city street in lit up conditions, did not see in good time something that was in front of him on the road. That's a fundamental requirement of careful driving that you keep a proper lookout and drive at an appropriate speed which, I believe, he didn't do. He is very remorseful, I accept that. He stayed at the scene, which is a very significant matter and he co-operated from day one with the guards. He gave a full statement. He's fully insured, so from that point of view, another forum will and is in a position to properly deal with that aspect of the case. And it is not correct that the lady ran out in front of the car. The appropriate sentence is, I measure his sentence at --

MR O'SULLIVAN: The maximum is two years, Judge.

JUDGE: Sorry?

MR O'SULLIVAN: In terms of imprisonment, the maximum is two years and there's the possibility of a fine as well. There is also --

JUDGE: Very good. I think the appropriate sentence would be a suspended sentence of 12 months' imprisonment, suspended for 12 months on the condition that he keeps the peace and is of good behaviour and he'll be disqualified from driving for a period of four years.

Grounds of Appeal

7. The appellant appeals the consequential order on the basis that there were special reasons which would have justified the court at first instance, pursuant to s.26 of the Road Traffic Act 1961 (the Act of 1961), in declining to make a disqualification order or in specifying a period of disqualification of less than four years. Counsel for the appellant makes the case that she had intended to advance an argument to the Circuit Court Judge that there were such special, but was deprived of the opportunity of doing so when the Circuit Court Judge proceeded to immediately deliver his judgment at the close of the evidence without affording her any opportunity to make a plea in mitigation or to make submissions on any other matter including whether there were special reasons that would justify a deviation from the norm.

8. The case made before us in respect of special reasons relies not just upon the appellant's employment as a taxi driver, but seeks to emphasise the somewhat bizarre and unusual circumstances of the offence. There were no aggravating factors whatever. It appears to have arisen due to no more than a regrettable failure to see the injured party in time who, unexpectedly from the point of view of the appellant, was out on the road, towards the middle of the road and seemingly trying to flag down a taxi going in either direction along South Mall. In support of the case that there were special reasons we were referred to this Court's recent judgment in *The People (Director of Public Prosecutions) v Skillington* [2016] IECA 209.

Relevant Statutory Provisions Governing Consequential Disqualifications

9. The relevant statutory provisions are those contained in s.26 of the Act of 1961 as substituted by s.65 of the Road Traffic Act 2010. This section provides (to the extent relevant):

"26.— (1) Subject to subsection (5)(b), where a person is convicted of an offence specified in the Second Schedule, the court shall make an order ('consequential disqualification order') declaring him or her to be disqualified for holding a driving licence.

(2) Subject to subsection (3), a consequential disqualification order operates to

disqualify the person to whom the order relates for holding any driving licence

whatsoever during a specified period or during a specified period and thereafter until he or she has produced to the appropriate licensing authority, as may be specified in the order, a certificate of competency or a certificate of fitness or both.

(3) A consequential disqualification order resulting from a conviction for an offence under—

(a) section 52 or 53 tried on indictment where the contravention involved the

driving of a mechanically propelled vehicle,

...

operates to disqualify the person to whom the order relates for holding any driving licence whatsoever during a specified period and, unless the court is satisfied that a special reason (which it shall specify when making its order) had been proved by the convicted person to exist in his or her particular case such that it should not so operate, thereafter until the person has produced to the appropriate licensing authority, as may be specified in the order, a certificate of competency or both a certificate of competency and a certificate of fitness.

(4) (a) The period of disqualification specified in a consequential disqualification order shall, where the person to whom the order relates is convicted of an offence under—

(i) section 4 of the Road Traffic Act 2010 consisting of a contravention of subsection (1) of that section,

(ii) section 5(1) of the Road Traffic Act 2010,

(iii) section 52 or 53, tried on indictment,

(iv) section 106, where the offence involved the matters specified in subparagraphs (i) to (iv) of subsection (3)(b) of this section,

(v) section 12 or 14 of the Road Traffic Act 2010, or

(vi) section 138(3) of the Railway Safety Act 2005, tried on indictment, be not less than 4 years in the case of a first offence under the section concerned and not less than 6 years in the case of a second or any subsequent offence under the same section.

(b) The period of disqualification specified in a consequential disqualification

order shall, where the person to whom the order relates is convicted of an

offence under section 4 of the Road Traffic Act 2010 consisting of a contravention of subsection (2), (3) or (4) of that section or an offence under

subsection (2), (3) or (4) of section 5 of the Road Traffic Act 2010, be—

(i) in the case of a first offence under the section concerned, not less than the appropriate period specified in column (3) of the Table to this subsection, and

(ii) in the case of—

(I) a second or subsequent offence under that section, or

(II) where the person has been previously convicted under that section, a first or subsequent conviction under the other section, not less than the appropriate period specified in column (4) of that Table.

(c) In paragraph (b) 'appropriate period' means the period that is appropriate having regard to—

(i) the concentration of alcohol in the blood, urine or breath, as the case may be, of the person concerned in relation to which that person was convicted of the offence concerned, and

(ii) the concentrations of alcohol in blood, urine or breath, as may be appropriate, specified in column (2) of the Table to this subsection.

(5) (a) Subject to paragraph (b), the period of disqualification specified in a consequential disqualification order shall, where the person to whom the order

relates is convicted of an offence under section 52 or 53 tried summarily or

under section 56, be not less than 2 years in the case of a first offence under

the section concerned and not less than 4 years in the case of a second or

any subsequent offence under the same section committed within the period

of 3 years from the date of the commission of the previous offence or, in the

case of more than one such offence, the last such offence.

(b) Where a person is convicted of an offence under section 52 tried summarily or under section 56, the court may, in the case of a first offence under the section concerned, where it is satisfied that a special reason (which it shall specify when making its order) has been proved by the convicted person to exist in his or her particular case to justify such a course—

(i) decline to make a consequential disqualification order, or

(ii) specify a period of disqualification in the consequential disqualification order of less than 1 year.

10. The offence of careless driving contrary to s.52 of the Act of 1961 is an offence specified in the Second Schedule to the Act of 1961.

Decision

11. We carefully considered s.26 of the Act of 1961 as substituted. However, unlike in the case of a careless driving charge tried summarily (provided for under s.26(5) of the Act of 1961) we do not believe that in the case of a careless driving charge tried on indictment that a statutory power exists to either decline to impose a consequential disqualification for four years, or alternatively to impose a disqualification for a lesser period, on the grounds that a special reason or reasons exists. We have invited the appellant's counsel to direct us to where that power supposedly exists, if indeed it does exist, but she has been unable to do so.

12. Counsel for the appellant, while effectively conceding that point, still maintains that, but for the trial judge denying her the opportunity to make any submissions, she could have addressed him on his discretion to exercise a power that does exist, namely the power under s.26(3) of the Act of 196, not to require a disqualified person to have to produce to the appropriate licensing authority a certificate of competence and/or fitness when reapplying for a licence at the end of the disqualification period, should the court consider that special reasons exist justifying dispensing with this requirement.

13. We have carefully reviewed the transcript and it bears out counsel's complaint that the sentencing judge launched straight into giving judgment without affording defence counsel the opportunity to present a plea in mitigation or to make any other submissions. This was ostensibly an error in principle.

14. In fairness to the sentencing judge, he may well have inferred that the defence were primarily concerned with ensuring that their client should avoid a custodial sentence to be actually served, so that having reached a firm determination by the end of the evidence that the case could be met by an entirely suspended sentence he may have felt there was no need to hear counsel, particularly in circumstances where he had no discretion with respect to the length of any consequential disqualification order. Nevertheless, by proceeding in the way that he did he deprived counsel of the opportunity to make any submissions with respect to any other aspect of the consequential disqualification order.

15. In circumstances where we have found an error of principle, we will quash the sentence imposed by the court below and proceed to re-sentence the appellant.

16. We will re-impose the sentence of twelve months imprisonment, and will again suspend it in its entirety on the same terms as was done in the court below. However, in so far as the consequential disqualification is concerned, while we must again impose a disqualification of four years, we do believe that special reasons exist, which would justify us in stating that the requirement to produce to the licensing authority at the end of the four year disqualification period a certificate of competency and/or fitness shall not operate in this case.

17. The special reasons which have influenced us are the very usual circumstances of the accident; the fact that it occurred at night albeit in a city centre area illuminated by street lighting; the fact that the carelessness involved appears to have been a momentary lapse in concentration such that he failed to keep an adequate look out ahead; the appellant's level of driving experience; the absence of aggravating features such as speed, intoxication, fatigue or use of a mobile phone; the absence of anything to indicate

that the accident was caused by any general lack of competence on the part of the accused as a driver, as opposed to a momentary lapse in concentration, such that he might benefit from additional driving instruction; the length of time he would be awaiting a re-test; the absence of any previous driving convictions; the responsible way in which he met the case; his remorse; the fact that he was fully insured so that the injured party will be appropriately compensated, and the additional gesture of compensation provided by the accused.