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Judgment: approved by the Court for handing down | *Delivered:* **05/12/2003**
(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

MICHAEL HUGH BOAL

Before: Carswell LCJ and Kerr J

CARSWELL LCJ

[1] This is an appeal against sentences imposed by His Honour Judge Gibson QC at Downpatrick Crown Court on 5 September 2003. The appellant had pleaded guilty on arraignment to two charges of dangerous driving causing death, contrary to Article 9 of the Road Traffic (Northern Ireland) Order 1995. The judge made a custody probation order on each count, consisting of three years' custody, to be followed by 18 months' probation supervision, to run concurrently. The appellant appealed to this court with the leave of the single judge.

[2] The accident out of which the prosecution arose occurred outside Newtownards, on the main road known as Bradshaw's Brae, at about 3 am on Sunday 21 October 2001. The appellant, then aged 18 and still a restricted driver, was driving a small Vauxhall Nova car with four passengers on board. Two of these, both sitting in the rear seat, were Laura Elizabeth Ross, aged 15, and her friend Tammy Jane Towers, aged 16. These girls were staying overnight at the Towers' house in Dundonald when the appellant rang them late at night on a mobile telephone and invited them to go for a drive. They had retired to bed, but climbed out through a bedroom window and boarded the appellant's car. Some time before 1 am he collected two further young passengers, Andrew Millar and Christopher Boyd. Between then and the time of the accident the party drove about in the Nova car. Another motorist saw the car some five miles from the scene of the accident a short time before and stated that he saw nothing untoward about the way in which it was being

driven at that time. Blood testing confirmed that the appellant was not under the influence of drugs at the time of the accident, but the evidence of his alcohol level was more equivocal.

[3] When the accident occurred the appellant was travelling down Bradshaw's Brae in the direction of Newtownards, having just entered the 40 mph limit. There is a fairly fast downhill stretch before one meets the first of a series of bends. The appellant lost control of the car on a sweeping left hand bend. It crashed into a brick wall at the entrance to a house and on to a utility pole, then became airborne before coming to rest against the hedge. There were no witnesses to the accident and the appellant and his passengers were not able to provide any clear evidence from recollection of the crash. The damage to the car was severe and all the occupants were seriously injured, the two girls fatally. It is clear that the appellant's speed was excessive, causing him to lose control of the vehicle, but it cannot be established with any accuracy what that speed was. The forensic witness who prepared opinion evidence as part of the Crown case, Mr Stephen W Quinn, a chartered engineer, after examining the wrecked car and the scene of the accident, expressed the view that the driver had travelled into the bend too fast and lost control at an early stage on the bend. He stated at page 5 of his report:

> "The manner of loss of vehicle control and the fact that the car moved airborne onto the road surface after it impacted the wall and the wooden utility pole are very strong indicators that the car was travelling well in excess of the 40 mph limit when it went out of control."

Mr Kenneth Allen, an engineer instructed on behalf of the appellant, made a calculation of the vehicle's speed from the tyre marks which came to 48 mph, plus or minus 5 mph, which the judge found surprisingly slight, as do we.

[4] Laura Ross sustained a head injury with bleeding over the surface of the brain, a fracture dislocation of the neck and transection of the underlying spinal cord, transection of the aorta, fractures of three left ribs and all right ribs, laceration of the internal organs and fractures of the pelvis, collar-bone, forearm and thigh; these multiple injuries caused rapid death. Tammy Towers sustained laceration of the aorta with bleeding into the chest cavities, fractures of ten right ribs, bruising and laceration of the lung and laceration of the liver and spleen; the combined effects of her multiple injuries caused rapid death. The roof of the car was cut off by the fire brigade to remove the girls' bodies.

[5] The male passengers were both injured, one at least apparently seriously, but we have no details of their injuries. The appellant was deeply unconscious on admission to hospital. He sustained a fractured of his pelvis,

a crush fracture of the C5 vertebral body and a fracture of the jaw. He lost the sight of his right eye. The severity of the injuries to the occupants of the car is an indication of the severity of the crash and the probable high speed of the vehicle.

[6] The appellant, who is now aged 20 years, has no criminal record. He lives with his family, who are supportive, has always had a stable lifestyle and was in steady employment. He saved up and bought a car and passed his driving test some six months before the accident. He has no memory of the accident or the immediately preceding events: Mr RS Cooke, a consultant neurosurgeon, accepts this as a genuine pre-traumatic amnesia. According to his mother, he has been "holding himself together" since the accident, and has abused alcohol, although he did not drink much before. Dr Carol Weir, a chartered clinical psychologist specialising in addiction, expressed the opinion that his high alcohol consumption is an attempt to escape temporarily from his feelings and thoughts about the accident which at present he cannot face. This view is confirmed by Dr N Chada, a consultant psychiatrist, who describes the appellant's reaction in psychological terms as "avoidant" and states that he expresses considerable remorse and regret at the accident and its tragic consequences. He has not driven a car since the accident and the probation officer in her pre-sentence report regards the likelihood of re-offending as low. She does, consider, however, that he would benefit from probation supervision on his release from prison.

[7] In his sentencing remarks the judge set out all the material facts and circumstances fully and carefully, referred to a number of guideline cases and summarised accurately the principles on which a sentencing court should act in such cases and the approach which it should take. He described the accident as having been caused by excessive speed at a dangerous bend coupled with the appellant's young age and his inexperience in driving. We are in agreement with this summary, save that we are not fully persuaded that the bend posed any particular difficulty or danger at moderate speeds, though its configuration was such, together with the effect of the heavy passenger load in the small car, that once the appellant lost control at all the vehicle went careering off course.

[8] We gave extended consideration to the issue of sentencing in cases of dangerous driving death in our recent decision in *Attorney General's References (Nos 2, 6, 7 and 8 of 2003)* (2003, unreported), to which we would refer, and do not propose to set out our conclusions again in this judgment. Mr JP Lavery QC for the appellant urged upon us that although this case might come into the intermediate category of culpability, as set out in *R v Cooksley* [2003] 3 All ER 40, it came very low in that class. The only aggravating factor taking it into the intermediate category was that of the double deaths, whereas all of the mitigating factors specified in that judgment were present. He therefore

submitted that an equivalent sentence of four and a half years was excessive and wrong in principle.

[9] We see considerable force in counsel's argument, but we have to pay considerable attention to the increasing public concern about dangerous driving and the disastrous consequences which can follow from driving vehicles at speeds and in a manner which puts other persons' lives and safety at risk. As the Court of Appeal pointed out in paragraph 12 of its judgment in *R v Cooksley,* it is important for the courts to drive home the message as to the dangers which can result from dangerous driving and drivers have to appreciate the gravity of the consequences which can flow from their not maintaining proper standards of driving. We must repeat what Kay LJ said in *Attorney General's Reference (No 56 of 2002] (Nnamdi Megwa)* [2003] 1 Cr App R (S) 476 at 483:

> "… there can be no question at all but that the courts have reacted to the views of Parliament and the views of the public about matters of this kind, and sentences that would have been deemed appropriate 10 years ago now would not begin to be considered to be right. Sentences have been very substantially increased. It is necessary for any judge sentencing in matters of this kind to take that on board and to pass a sentence that properly gives effect to that general increase."

On the other side of the scale, we can also appreciate the effects on the life of the appellant, a young man of just under 21 years, of having to undergo a custodial sentence in consequence of a single error in driving. We feel that we should repeat what we said in paragraph 64 at the conclusion of our judgment in the *References:*

> "We may say in conclusion that we have not found these cases easy to decide. We fully appreciate that to many it may seem unfairly draconian to impose imprisonment upon a young man who has made an error in the course of driving a vehicle, even a serious one, the more so when the consequences in his life of having to serve a prison sentence may bear very heavily upon him. We have nevertheless to bear in mind the consequences which have ensued from those errors, irremediable and sometimes catastrophic to the bereaved families, and the clamant public demand, which finds its expression in the intention of Parliament contained in the

> legislation, that condign punishment be visited upon defendants in such cases, by way both of retribution and deterrence. The balance which the courts must attempt to strike between the level of culpability of the offenders and the magnitude of the harm resulting from the offences is difficult to achieve and involves making decisions which may be painful."

[10] We therefore have to uphold the correctness of the judge's view that notwithstanding that this accident was to a considerable extent the product of inexperience as well as speed, it has to attract a custodial sentence. We do consider, however, that if we apply the standards contained in the guidelines set in *Cooksley* and accepted by us in the *References,* this case should not be placed in so high a category, taking into account all the factors. In our opinion the proper level for an equivalent custodial sentence would have been three years rather than four and a half years. We agree with the judge's decision to make a custody probation order. We shall therefore allow the appeal and substitute a custody probation order, consisting of a custodial element of two years, to be followed by one year's supervision by a probation officer.