

Judicial Communications Office

Friday 29 September 2017

SENTENCING OF JOHN AUGHEY

Summary of Judgment

Her Honour Judge Smyth, sitting today in Belfast Crown Court, imposed a determinate custodial sentence of two years on John Aughey who was found guilty of dangerous driving at the Ardoyne interface in 2015. He will serve 12 months in custody and 12 months on licence.

John Aughey (“the defendant”) was convicted by a majority jury verdict of one count of causing grievous bodily injury to Phoebe Clawson by dangerous driving, two counts of assault occasioning actual bodily harm to Roisin McGlone and Andrew George, and three counts of assault in respect of Kiera Moss, John O’Hara and Mark Richardson.

The offences were committed on 13 July 2015 when the defendant was driving past the Ardoyne shops on his way home from an Orange Order parade. His car became snarled in traffic and he was identified as a member of the Orange Order by members of a crowd gathered at the shops. The crowd reacted in a hostile manner, one bottle was thrown at the defendant’s car and one member of the crowd approached his vehicle and kicked at the wing mirror. The defendant did a U-turn into a parking bay where members of the public were standing and struck a number of people including Phoebe Clawson who slipped off the bonnet and fell underneath his car. Despite police officers banging on his car window and shouting at him, the defendant continued to drive and Ms Clawson was dragged for three seconds until the car stopped. The court heard that she suffered a shattered pelvis, a broken collar bone and a broken ankle.

The jury rejected the defendant’s defence that he was put in fear by the actions of some members of the crowd and that he genuinely and reasonably believed that he had no choice but to drive as he would otherwise have been killed or seriously injured. **At the start of the sentencing hearing, Judge Smyth said it was important to state that it had never been the prosecution case that the defendant deliberately drove into pedestrians or that he intended to hurt anyone. The issue was that he had caused serious injury to others by driving in a manner which fell far below that to be expected of a competent and careful driver irrespective of any lack of intention to cause harm.**

Sentencing Guidelines

In her sentencing remarks, Judge Smyth set out the guidelines for the offence of dangerous driving causing death and grievous bodily injury. The sentencing guideline cases set out the starting points to be applied:

- No aggravating circumstances – 12 months to 2 years;

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- Intermediate culpability – 2 to 4 ½ years;
- Higher culpability – 4 ½ years to 7 years;
- Most serious culpability – 7 to 14 years.

Prosecution and Defence Submissions

The prosecution submitted that this was a case where the defendant's driving fell into the "higher culpability" bracket. They said there were three aggravating factors:

- The defendant drove in a manner which involved him driving into a crowd on or adjacent to the road in circumstances where their presence and the inevitability of collision should have been glaringly obvious;
- More than one person was injured albeit not seriously; and
- The defendant drove on after the collision for a short but nonetheless perceptible distance in the face of efforts by police to stop him. The prosecution said the defendant's claim that he was unaware that he had collided with multiple members of the crowd was "an affront to common sense".

Judge Smyth said the court had to consider whether the manner of the defendant's driving should be viewed as an aggravating factor. She considered the U-turn was dangerous because of the presence of persons on the road and the inevitability of collision and therefore the manner of the defendant's driving and the circumstances in which he carried out that manoeuvre constituted the offence of dangerous driving and was not therefore an aggravating factor. The judge further considered that the defendant's behaviour in continuing to drive after the collision despite clear indications by the police to stop was an aggravating factor. She said the CCTV confirmed the close presence of police officers as they tried to stop his car, some of whom were injured as they did so. Judge Smyth said that while the defendant may have no recollection of colliding with anyone as a result of temporary amnesia caused by the stress of the situation, the agreed medical evidence did not suggest any reason why he would have been unaware of the collisions as they occurred or the efforts of the police to stop his car.

The defence submitted that there were no aggravating factors in the case and listed a number of mitigating factors including the defendant's absence of any relevant convictions, his previous good character, his genuine shock and remorse, his loss of employment and the impact on his and his wife's health. Judge Smyth referred to a pre-sentence report in which the defendant said he had no recollection of colliding with the victims but felt terrible. The probation officer, however, stated that the defendant struggled to identify any possible long-term consequences to the victims in any detail and appeared "somewhat detached" from the impact on others. The report said the defendant claimed to have acted out of "blind panic" and had thought there was enough room in the road to make a U-turn. He did not consider his actions putting others at risk.

Conclusion

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Judge Smyth said the circumstance of this case were “unique”:

“Had it not been for the fact that you found yourself in a threatening situation, you would have continued on your journey home and no offence would have been committed. That is a powerful mitigating factor in terms of your culpability.”

She noted the sentencing guidelines state that culpability must be the dominant factor when assessing as precisely as possible where in the level of seriousness the particular offence comes when the offence involves no intention to kill or injure. In order to properly assess the defendant’s culpability the court has to consider all of the circumstances:

“In carrying out a U-turn manoeuvre, there was an obvious danger that members of the public who were present both on and off the road would suffer serious injury. The jury rejected your assertion that you had no choice but to drive in this way because you feared for your life. Whilst members of the crowd did react in a hostile manner towards you, with one person throwing a bottle at your vehicle and another kicking at your wing mirror, the fact is that the closest persons to your vehicle before you made the U-turn were police officers. In deciding to carry out that manoeuvre, you could not have been unaware of the heavy police presence and the phalanx of armoured vehicles on both sides of the road.”

Judge Smyth said the court had to consider the potency of the aggravating factor that the defendant continued, albeit for a short period, to drive after he collided with members of the public. In so doing, Phoebe Clawson sustained serious injuries and “but for the determined and frantic efforts of the police, the consequences could have been catastrophic”.

The judge considered that the case fell into the category of intermediate culpability and as such the starting point was 2 to 4 ½ years in prison. She took into account the aggravating factor that the defendant continued to drive after the initial collision. She also took into account the mitigating factors including the threatening circumstances which were the catalyst to the offences as well as the defendant’s personal mitigation. Judge Smyth concluded that a starting point of two years imprisonment reflected the defendant’s culpability. She said the fact that the defendant contested the case was not an aggravating factor but it did mean that he was not entitled to the credit he would have received if he had pleaded guilty.

John Aughey was sentenced to a total determinate custodial sentence of two years imprisonment. Judge Smyth ordered that he should serve 50% of the sentence in custody with the remainder on licence. She further disqualified him from driving for two years.

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: Alison.Houston@courtsni.gov.uk