

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

STEPHEN McMULLAN

HUTTON LCJ

This is an application for leave to appeal by Stephen Patrick McMullan who is now aged 24. On 14 May 1992 he appeared before His Honour Judge Martin and he there pleaded guilty before him. On 28 May 1992 he was sentenced by the learned judge. All the counts on the Indictment arose out of his taking a motor car without the owner's consent; it would appear in the early hours of the morning of 14 July 1991. He was charged as follows:

On the 1st Count, taking a motor vehicle without the owner's consent. He was sentenced to one year's imprisonment.

On the 2nd Count, he was charged with criminal damage to which he pleaded guilty. He was sentenced to one year's imprisonment.

On the 3rd Count, he was charged with using a motor vehicle without having insurance. In respect of that count he was fined £50 and disqualified for 5 years.

On the 4th Count, he was charged with driving whilst disqualified. He was sentenced to one year's imprisonment and disqualified for 5 years.

On the 5th Count, he was charged with reckless driving. That was reckless driving on the Ormeau Road. He was sentenced to one year's imprisonment and disqualified for 5 years.

On the 6th Count, he was charged with reckless driving on Donegall Road and at the Broadway Roundabout, Belfast, and he was sentenced to one year's imprisonment and disqualified for 5 years. All the sentences were to be concurrent except that Count 6 was to be consecutive to Count 1. Therefore as regards the counts to which he pleaded guilty he was sentenced to a total of 2 years. In addition, the learned judge put into operation 2 sentences, each of 3 months' imprisonment imposed at

Belfast Magistrates' Court on 27 November 1990 which were sentences of 3 months' imprisonment suspended for one year, and they were put into operation to be consecutive to the sentences imposed in respect of the various driving offences, so that was a total of 2 years 3 months' imprisonment. The learned judge also directed that those sentences would be consecutive after a sentence which the applicant was already serving, and it appears that in practical terms those sentences of 2 years and 3 months would either begin on 7 June or on 7 July. So in practical terms he would be in prison for about, at the most 6 weeks, before those sentences of 2 years and 3 months began.

The offences of reckless driving were committed in this way and are described in the statement of Constable Robinson who was driving a police car in the early hours (at about 4.40 am) in May Street, Belfast, together with an observer in the car. He says he was driving along May Street when he saw a Vauxhall Cavalier car cross the junction from Donegall Square East into Adelaide Street and it was travelling at high speed. He then followed that car, flashing his police lights and sounding his siren. It was quite obvious that the applicant knew he was being pursued, but he still continued at great speed up Ormeau Avenue and then along the Ormeau Road, and it appears the vehicles were travelling in excess of 70 mph. As I have stated, the two-tone horn was being sounded and the police car's lights were being persistently flashed to stop the car that the applicant was driving, but he continued at a very fast speed and the car then turned into University Street and into Botanic Avenue, and down to Shaftesbury Square and then along the Donegall Road, again with the applicant's car and the police car in pursuit travelling in excess of 70 mph. Then coming up to the Broadway Roundabout the applicant really lost control of his car and it bounced off the kerb and it came into contact with the police car, and that caused the car to stop and a number of men who were into the applicant's car managed to run off, but fortunately the applicant was detained.

He was questioned by the police, and in the course of being questioned he was asked the following questions and he gave the following answers:

"Q What made you broadside?

A. Going too fast.

Q. Were you driving?

A. Aye.

Q. How fast would you say you were going?

A. Don't know. No idea at all.

Q. Well do you think you were going too fast for that road in the area?

A. Aye, too fast."

That of course was quite obvious. This was a highly dangerous and reckless piece of driving as we observed to counsel in the course of the submissions. Death could easily have been caused to some quite innocent person going home late on the road, walking on the road or driving in a car, and there could easily have been a horrific accident, as indeed there was in one of the other cases which were before us this morning where another young man had taken a car without the owner's consent and driven at a highly reckless speed.

We consider that there can be no criticism whatever of the sentence of one year's imprisonment which was imposed on both counts in respect of the reckless driving, and indeed the learned judge would have been entitled to pass a higher sentence.

But Mr Cushinan submits two matters. He first of all submits that the learned trial judge had made the sentence on Count 5 for the reckless driving on the Ormeau Road concurrent with the other driving offences, whereas the judge had made the sentence of one year's imprisonment on Count 6 for reckless driving on the Donegall Road and at Broadway consecutive. Mr Cushinan submits that that is not correct, and that if the judge had decided to make the sentence of one year on Count 5 in respect of the reckless driving on the Ormeau Road concurrent with the other counts, he should have done the same in respect of the sentence of one year's imprisonment for the reckless driving on Count 6 on the Donegall Road. As a technical point, viewed in complete isolation, there is no doubt a little substance in that. But we are quite satisfied that what the learned trial judge intended to do, and in fact did do in practical terms, was to impose an overall sentence for the various offences, other than the reckless driving, and then to impose a consecutive period for the reckless driving, which in fact is what he did. Strictly speaking he would have been better, as we have observed, to have made the sentence on Count 5 concurrent also with Count 6 and made them both consecutive to the other counts, but we think that is a matter of little moment and that he cannot in practical terms be faulted for what he did. And it is quite clear that a judge is entitled to impose consecutive sentences in respect of the taking of a car without the owner's consent and then its subsequent reckless driving, even though it be on the same night. That appears in the decision of the English Court of Appeal in The Queen v Newbury[1975] Criminal Law Review at p 295 where the facts were by no means dissimilar to this case and where the report is as follows (it was the decision of Scarman LJ, James LJ and Bourne J, and the appellant was aged 25):

"FACTS:Pleaded guilty to taking a conveyance and driving dangerously. Late at night he took a parked car. He was pursued by the police. He ignored signals to stop and in an attempt to escape drove through a built-up area at high speed, drove through 2 traffic lights which were at red and nearly collided with

another car. He said he had been drinking and acted on impulse. Sentenced to 12 and 15 months imprisonment consecutive and disqualified for 2 years. Previous convictions: 9 for taking vehicles, 8 for driving disqualified, one for dangerous driving, 8 for breaking into premises and theft, one for assault. On probation, discharged, fined, approved school, borstal, prison terms up to 33 months.

DECISION: It was said that the total was too long and that the sentences should not have been made consecutive. Having regard to his record for taking vehicles the 12 months was lenient. The driving was highly dangerous and was an entirely separate offence. It was right in principle and on the facts to make the sentences consecutive. If they were not, it would only serve to encourage those who took vehicles to drive as hard as they could to avoid arrest."

So we state that that is a case in which the facts are very similar to this one and it shows that the sentences, for taking a motor vehicle and the subsequent reckless driving can be consecutive, and indeed a higher sentence was passed there (one of 2 years and 3 months) than in the present case. And a further factor of course is that sadly this young man has got a quite deplorable record which runs to about 18 pages, and therefore we consider that it cannot be stated that the judge approached this matter erroneously or imposed a total sentence which was too great. Mr Cushinan also submitted that the overall effect was too great because the judge had given effect to suspended sentences of 3 months, but the general approach is that a suspended sentence should be given effect to and we can see nothing wrong in what the judge did. We take account of the fact that the sentences had been imposed in November 1990 and were suspended for a year, and therefore that period of a year was drawing to an end when these new offences were committed, but nonetheless there were some months still to run and we think in all the circumstances of this case there was no reason for the judge to reduce the period of 3 months. That was a matter for him and we cannot say that he erred in not doing so, nor do we consider that he erred in making the total sentence of 2 years 3 months consecutive to a sentence that this appellant was already serving.

As we have stated, viewed overall this was a very bad offence, a highly dangerous offence. This applicant has a very bad record and there are no grounds whatever for interfering with the sentences imposed by the trial judge. We therefore refuse the application for leave to appeal.