



JUDICIARY OF
ENGLAND AND WALES

IN THE CROWN COURT AT LEICESTER

**THE QUEEN
-v-
FELIX GILLON**

SENTENCING REMARKS OF MR JUSTICE HADDON-CAVE

Introduction

1. Felix Gillon, you have been found guilty by a jury of this court on overwhelming evidence of Causing Death by Dangerous Driving (Count 1) and Perverting the Course of Justice (Count 2). You told a series of lies to seek to cover your tracks but the jury saw through it all. Sit down please, I will now sentence you for these serious offences.

The facts

2. At about 15:03:00 hours on 3rd May 2017, Mr Kerry Pemberton's Iveco lorry broke down for the second time that day due to faulty water hoses. He pulled over and parked on the hard-shoulder on M69, got out of his cab and called for assistance.
3. Almost exactly 10 minutes later, at 15:13:48 hours, a Scania flatbed lorry driven by the Defendant, loaded with a porta-cabin, struck the rear offside of the stationary Iveco lorry. The Defendant had been travelling at speeds of 50-54 mph. As a result of the impact, the Iveco lorry was launched forward and Mr Pemberton was crushed up against the safety barrier and then pinned under the wreckage. He survived the initial impact and spoke to rescuers who were on the scene almost immediately, but tragically died shortly afterwards despite the best medical attention. His last words were, movingly, about how much he loved his wife, children and grandchildren.
4. Three eye-witnesses who were also driving up the M69 that afternoon, saw the Defendant's Scania lorry being driven erratically, slowing and veering in and out of the hard shoulder. So much so, that one motorist was scared and tried to get into another lane. The tachograph and expert evidence confirmed what the eye-witnesses had seen.
5. There was overwhelming and irrefutable evidence at the trial that the reason for the erratic driving was because for the 4 minutes and 9 seconds before the

collision, the Defendant was accessing and navigating pornographic websites on his Samsung touchscreen mobile phone. I am satisfied to the requisite standard of proof, as the jury must have been, that at collision minus 4 minutes 9 seconds (*i.e.* at 15:09:53 hours) whilst travelling at 53 mph in the nearside lane, the Defendant entered the search term “<https://www.google.co.uk/search/...porn+star+candy+love>” and began navigating porn sites such as “[Freeones.com/category/amateur](https://www.freeones.com/category/amateur)” and selecting various picture options. Immediately before the impact, at 15:13:36, the records show he was on a website called “[Freeones.com/categories/lesbian](https://www.freeones.com/categories/lesbian)”.

6. Thus, the reason the Defendant veered in and out of the hard-shoulder and never saw Mr Pemberton’s highly visible lorry parked on the hard-shoulder was clear: because he was driving his lorry whilst at the same time cruising pornographic websites on his phone.
7. In the aftermath of the collision, whilst the emergency services were attending to Mr Pemberton, the Defendant began to realise that he was in potentially serious trouble. I am satisfied to the requisite standard of proof, as the jury must have been, that some 30 minutes after the collision he disassembled his Samsung mobile phone, took out the battery and snapped the SIM card and the threw these elements away into the grass verge by the side of the motorway in order to prevent police finding what would be crucial and highly incriminating evidence. Fortunately, an alert off-duty police officer spotted the Defendant appearing to throw what looked like a mobile phone onto the motorway bank and alerted his colleagues. The phone was immediately retrieved from where, when confronted, the Defendant indicated he had thrown it. The battery and SIM card were eventually found when officers returned later the same day with a police dog.

Victim impact

8. I have re-read the victim impact statement of Mr Pemberton’s wife of 34 years, Mrs Cheryl Pemberton, made on behalf of herself, their 6 children and the family, many of whom have sat through the entire trial. She speaks movingly of how broken-hearted she and the entire family are at Mr Pemberton’s untimely death. He was clearly a remarkable family man who was much loved and someone who would go out of his way to help anyone, whether he knew them or not.

Death by Dangerous Driving

Assessment of starting point

9. The Sentencing Guidelines provide (at paragraph 15):

“Using a hand-held mobile phone when driving is, in itself, an unlawful act; the fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by dangerous driving offence was committed will always make an offence more serious. Reading or composing text messages *over a period of time* will be a *gross* avoidable distraction and is likely to result in an

offence of causing death by dangerous driving being in a higher level of seriousness.” [*Italics in original*]

10. The use of any mobile phone whilst driving is a serious matter. The fact that the Defendant was accessing and navigating pornographic websites on his phone for over 4 minutes before the collision is, in the words of the Sentencing Guidelines, a *gross* avoidable distraction and elevates the case to an altogether higher level of seriousness. In my judgment, there is a qualitative difference between texting whilst driving and the viewing of images for gratification such as those in the present case. The latter is more serious because such images are potentially more grossly distracting.
11. The fact that he was doing so whilst driving a heavily laden flatbed HGV lorry at speed on a major motorway compounds the picture. His conduct was reckless and egregious. I am satisfied that the eye-witnesses observations were accurate and he weaved in and out of the hard-shoulder during those 4 minutes and posed a serious risk to other road users.
12. Applying the Sentencing Guidelines as I must, in my view, as Counsel submitted, this a Level 2 case, *i.e.* driving that created a substantial risk of danger (starting point 5 years custody, range 4-7 years custody). Taking the above factors into account I take as my starting point 6 years.

Aggravating features

13. The Sentencing Guidelines (p. 11) list “*falsely claiming that one of the victims was responsible for the collision*” as an additional aggravating feature. In this case, the Defendant falsely claimed throughout the trial that Mr Pemberton was to blame for the collision for parking his lorry so that it protruded into the nearside lane. This allegation must have caused additional distress to Mr Pemberton’s family. For the avoidance of doubt, I want to make it clear that Mr Pemberton had parked perfectly properly within the hard shoulder in the unfortunate predicament in which he found himself that afternoon.
14. The Defendant has a previous conviction in 2006 for using a hand-held device whilst in charge of a motor vehicle for which he received a fixed penalty. Counsel informs me that the circumstances of that offence are that the Defendant was texting whilst stationary at a red light (as the Defendant volunteered in interview).

Perverting the Course of Justice

15. I turn to Count 2. The Defendant sought to dispose of a key piece of evidence which he knew would seriously incriminate him in relation to potentially serious charges.
16. I am clear that a separate consecutive determinate sentence should be imposed in relation to Count 2 and, as Mr Cooper submitted, Count 2 should in no sense be treated as an aggravating factor for Count 1.
17. The factors relevant to sentencing for this offence are (i) the seriousness of the substantive offence, (ii) the degree of persistence, and (iii) the effect of the

attempt to pervert the course of justice (see *R v Tunney* [2007] 1 Cr App R (S) 91).

18. Taking these three factors in turn:

- (1) It is accepted the substantive offence is serious (Causing Death by Dangerous Driving for which the maximum sentence is now 14 years);
- (2) In my view, there was a degree of persistence in what the Defendant did (see below);
- (3) I accept, however, as Mr Cooper submits, that the impact of his actions were relatively short-lived because the police were able to recover the data.

19. I am satisfied to the requisite standard of proof that the Defendant dismantled his phone and snapped the SIM card and scattered the SIM card, battery and phone in the grass verge by the motorway when he thought no-one was watching and where these items would never be found. I am also satisfied that he did this carefully, deliberately and surreptitiously some 30 minutes after the collision when he realised he could be in real trouble. Fortunately, as I have said, he was spotted throwing his phone away by an alert off-duty policeman and later a smart police dog found both pieces of the SIM card and the battery. I am also satisfied that when he realised that he been spotted throwing his phone away, he was sanguine about helping the police find the phone because he knew, or thought, he had destroyed and thrown away the SIM card which, in any event, they were unlikely to find even though he purported to tell them vaguely where he had dropped it and the battery.

Mitigating features and personal mitigation

20. I have borne in mind everything that has ably been said by Mr Cooper on the Defendant's behalf by way of mitigation. The Defendant is 56 years of age. He served in the Army Engineering Corps from 1978 to 1991 and was honourably discharged at the rank of Sergeant. He has been in employment as a driver since 1991 and the last 9 years with his employers, Western Transport. He has a long-standing partner.
21. It is said that he has privately expressed remorse but, as Mr Cooper so well articulates, this would have been better demonstrated by a different attitude to these criminal proceedings.

Ancillary orders

22. I am required by law to disqualify the Defendant from driving as part of the overall punishment for the offence under s.35A of the Road Traffic Offenders Act 1988. In addition, an order that the disqualification continues until the offender passes an extended driving test is mandatory for those convicted of causing death by dangerous driving (s.36(1) of the Road Traffic Offenders Act 1988).

23. In *R v Needham* [2016] EWCA Crim 455, the Court of Appeal clarified the effect of the introduction of sections 35A and 35B into the Road Traffic Offenders Act 1988 (and *c.f.* the mirror provisions at sections 147(A) and 147(B) of Powers of Criminal Courts (Sentencing) Act 2000). The Court of Appeal explained the purpose of sections 35A and 35B is to avoid defendants serving their disqualifications from driving whilst in custody. The Court noted that "*the effect of these provisions has not been fully understood by practitioners, court officials and, indeed, judges*". Section 35A applies to an offender where a custodial sentence has been imposed together with a period of disqualification for the same offence. Subsections (2) and (3) provide that a period of "*discretionary disqualification*" must be ordered together with an "*extension period*". The discretionary period is the disqualification which is given for the offending. The extension period is linked to the period in custody. The extension period will in most cases be half the custodial sentence. An adjustment may be required under section 35B where the Court imposes consecutive determinate sentences in relation to two or more counts.

24. The Sentencing Guidelines provide (at paragraph 31):

“Any disqualification is effective from the date on which it is imposed. When ordering disqualification from driving, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact. In principle, the minimum period of disqualification should either equate to the length of the custodial sentence imposed (in the knowledge that the offender is likely to be released having served half of that term), or the relevant statutory minimum disqualification period, whichever results in the longer period of disqualification.”

25. The minimum disqualification period is 2 years with a compulsory extended re-test. In my judgment, a disqualification period of 4 years would be appropriate in this case. This requires an extension and adjustment in the light of the total determinate sentences passed (see below) in accordance with *Needham (supra)*.

26. My reasons for this length of disqualification are the dangerousness of the Defendant's conduct and driving in this case (see above).

27. I recognise that commercial lorry driving has been the Defendant's living but an example has to be set.

Totality

28. I have borne in mind totality, to ensure that the total determinate sentence and ancillary orders are proportionate to the offending behaviour in this case and properly balanced.

Summary

29. As regards Count 1: as stated above, my starting point is 6 years under Level 2. In my view, however, balancing the aggravating and mitigating factors set out above, a further 6 months must be added to the 6 year starting point to make 6 years 6 months. As regards Count 2: In my view, taking into account all the facts and factors outlined above, an appropriate determinate sentence for Count 2 is 2 years. I allow a reduction of 6 months to the sentence in relation to Count 1 to take account of totality.
30. Accordingly, the determinative sentences which I pass are:
 - (1) Count 1: 6 years imprisonment;
 - (2) Count 2: 2 years imprisonment.
31. These sentences are to run consecutively, making a total sentence of 8 years.
32. I also order the Defendant is disqualified from driving for 8 years, comprising an initial period of 4 years, plus a section 35A extension of 3 years (in relation to Count 1) and a section 35B adjustment of 1 year (in relation to Count 2).
33. Felix Gillon, I sentence you to 8 years imprisonment and disqualify you from driving for 8 years. I further order that the disqualification continues until you pass an extended driving test. I further order seizure of your driving license. Please go with the officer.

The Honourable Mr Justice Haddon-Cave
14th December 2017