



JUDICIARY OF
ENGLAND AND WALES

IN THE READING CROWN COURT

R

- v -

KOWALCZYK & OTHERS

15 FEBRUARY 2013

SENTENCING REMARKS OF MR JUSTICE SWEENEY

Jacek Kowalczyk, Radoslaw Bielawski and Andrezj Skowron you were found guilty of causing the death by dangerous driving of Miss Baljinder Gill (Count 2) in the evening of Saturday 11 June 2011, which was just three days after her 34th birthday. Behind that offence, which involved the deliberate contriving of a crash in the outside lane of the A40 at a point just to the west of London, lay a conspiracy to commit fraud (Count 1) of which each of you was also convicted. The object of the fraud was to dishonestly gain financial compensation by falsely representing to the insurance company of the driver you had targeted to crash into the back of one of your vehicles that a genuine accident had taken place in consequence of which personal injury and/or vehicle damage had been sustained. Thus you were each involved in an enterprise to “crash for cash” as it has been called – that is an enterprise to deliberately cause a road traffic collision solely for the purpose of financial gain. This is the first such enterprise, resulting in a death, to come before the courts. The fact that it did not also lead to your obtaining the money was no thanks to you but rather, principally, the result of the police investigation into the crash.

The crash and the compensation claims that followed two days later were not spur of the moment events. Having presided over the long trial in this case, I have no doubt that the planning began at some point significantly before 11 June 2011 and culminated that evening when you and two others all met up in the Greenford area. You used two cars. The first was a left hand drive Audi A3 with darkened windows, which was owned by you Bielawski and registered in Poland. It was driven by you Skowron, accompanied by another man. The second car was a VW Passat which was owned and driven by you Kowalczyk, with Bielawski as one of the two passengers. You set off to the A40 in tandem and drove west. The two cars were in continuous contact via a telephone call from your phone Kowalczyk to yours Skowron. Between you all, you were looking for a vehicle that you could be confident was insured, and then to contrive an apparent accident in which it would crash into the back of the VW Passat thereby enabling those in that car to claim compensation To that end the taping around old damage to the rear of the VW had been removed in order that, if possible, it could be claimed that the damage had been caused by the crash. You eventually chose as your target a smart liveried Ford Transit van which was being driven by Mr John Fallon. By then you had reached the point on the A40 where it sweeps downhill, 3 lanes wide, from the area of the Swakerleys Roundabout and then flattens out shortly before the Denham exit. At that point it is, in all but name, a motorway – albeit with a pavement instead of a hard shoulder. Mr Fallon was driving at 70 mph, the maximum permitted speed, in the outside lane. You, Kowalczyk, positioned your VW car in front of him. Skowron you were behind both of them in the middle lane with another vehicle some distance in front of you also in the middle lane, which was fast being caught up with by the VW and the van in the outside lane. You Skowron then changed down and accelerated up the middle lane undertaking the van and then, as the gap narrowed between the VW and the car in front of you in the middle lane, you also undertook the VW and then, apparently without warning, pulled across into the outside lane immediately in front of it. To those travelling behind, who were unaware of the joint enterprise to contrive a crash, and of the fact that the Audi and the VW were in communication by telephone, it appeared (as was intended) that the appalling and unexpected driving of the Audi had forced the VW to brake. Knowing what was coming, you Kowalczyk were able to

brake instantly but instead of braking enough to avoid a collision you braked hard to a halt in order to get Mr Fallon to crash into the back of you. You Bielawski, in interview, described these manoeuvres as “suicide”. In the course of cross-examination you, Kowalczyk, described them as being “highly dangerous, with an obvious risk to other road users, and impossible to predict what would happen...”. Whilst these were things accepted after the event, they should have been obvious at the time to all three of you.

However Mr Fallon, who had seen the Audi start to cut across you, himself braked immediately and thus was able to stop just short of the back of your car. Travelling behind Mr Fallon’s van in her Ford Fiesta, Miss Gill was not so fortunate. The van would have obstructed her view of the Audi’s manoeuvre, and thus she was not able to brake in time, and at the point where the road flattened out crashed into the back of Mr Fallon’s van pushing it into the back of the VW and thereby causing the VW minor damage. In the meanwhile you Skowron carried on west, crossing rapidly into the inside lane and taking the Denham exit. However, during that process, Mr and Mrs Lim who were travelling west in the inside lane and who carried on past the crash managed to get the Audi’s registration number and later passed it to the Police. It was their public spirited conduct in doing so that eventually led to the downfall of all three of you. Having come off the westbound carriageway Skowron, you went round the roundabout and back up on to the A40 and returned east to Greenford. In the meanwhile Mr Fallon had also tried to follow the Audi, but had soon had to give up. He pulled over onto the pavement just short of the Denham exit, and rang the police. You, Kowalczyk followed him and parked immediately behind him in order to get his insurance details.

Miss Gill, however, was not able to move her Fiesta because the gravity of the damage to it resulting from the force of the collision was such that it had been disabled. Thus, although uninjured herself, she was stranded in the outside lane. Albeit that westbound traffic that evening was relatively light, the evidence showed that Miss Gill was thus left in a position of very considerable danger – not least the obvious danger of her car being crashed into at high speed by another vehicle. She

got out of her car, and was leaning back into it to get something, when that was precisely what happened.

Colin Lee you were driving your Renault van westbound in the outside lane. You had two passengers – a woman and her young child. You were travelling at 70 mph. Visibility was perfect. You arrived at the top of the hill at least 40-45 seconds after the initial crash. Having overtaken a coach as you started down the hill you had some 340 yards of clear visibility to Ms Gill's stranded Fiesta straight ahead of you. Whilst a stationary vehicle in the outside lane of such a road is relatively rare, you were under a duty to keep a proper lookout, and there were many visual indications that the Fiesta was stationary. Yet, over a period of 9 seconds, in which you could readily have braked to a halt, or slowed and gone into the middle lane, you failed to notice what should have been obvious. You did not brake until less than a second before impact when you were only 25 yards short of the Fiesta. Thus you crashed into the back of it at a speed of just over 50mph. The collision was described by one witness as "an explosion of metal glass and dust". It was the product of your careless driving (Count 5).

Miss Gill died at the scene from the terrible injuries that she sustained as a result of that crash.

It is clear, from the statement made by the Family Liaison Officer and from the moving statement made by her younger brother, that Miss Gill's death has had, and continues to have, an absolutely devastating effect on her family, who (shortly afterwards) also suffered the loss of her other brother to cancer.

By the time the police arrived on the scene you, Bielawski, had realised that if you gave your proper name to them there would be a risk that your ownership of the Audi would come to light, and that thus the joint enterprise would be exposed. Accordingly you rang Artur Okrutny, and for a fee of £300 it was arranged between you that you would give his details to the police, and that thereafter he would, if necessary, pretend to the police that he, rather than you, had been the rear seat

passenger in the car. Thus it was that both of you, Kowalczyk and Bielawski, pretended to the police at the scene that Bielawski was Artur Okrutny. Those were acts tending and intended to pervert the course of justice (Count 6).

It was against that background that, two days later, on Monday 13 June 2011, you Kowalczyk took the lead in commencing insurance claims on behalf of yourself and your two passengers – pretending that one of them was Artur Okrutny (albeit that Okrutny himself was not a party to the false claim).

The police investigation duly continued.

On 15 June 2011 you, Kowalczyk, made a statement to the police in which you falsely claimed that Artur Okrutny had been one of your two passengers in the VW Passat. That was another act tending and intended to pervert the course of justice (Count 6).

On 12 July 2011 you Okrutny, having liaised with Bielawski as to what to say, made a witness statement to the police in which (in accordance with your agreement with Bielawski) you falsely claimed, in some detail, that you had been the rear seat passenger in the VW Passat. Those were also acts tending and intended to pervert the course of justice (Count 6).

However, the police investigation led to the discovery of the truth, and brought you all to justice.

To state the obvious, no sentence that I can pass can possibly reflect the value of Miss Gill's life.

You, Kowalczyk, Bielawski and Skowron, having been convicted by the jury, must be sentenced for conspiracy to commit fraud (Count 1), and causing Miss Gill's death by dangerous driving (Count 2). In my view you all share equal responsibility for those offences, which were both the product of a joint enterprise. In addition you,

Kowalczyk were convicted of, and you Bielawski pleaded guilty to, doing acts tending and intended to pervert the course of justice (Count 6).

I have no doubt, in each of your cases, as I made clear when adjourning for sentence, that the custodial threshold has been crossed.

Clearly, the offence of causing death by dangerous driving is the most serious one. In order to avoid the double counting of aggravating features, and as I am entitled to, I propose to pass sentences for that offence which also reflect your participation in the conspiracy to commit fraud which underlay it. In your cases, Kowalczyk and Bielawski, there will also be consecutive sentences in relation to your related doing of acts tending and intended to pervert the course of justice. I will, however, keep totality firmly in mind.

As to the offence of causing death by dangerous driving, I have first considered in relation to each of you whether you are, in the terms of the relevant legislation, dangerous. In each case I have decided that you are not.

In determining the seriousness of the offence I must first, in accordance with the relevant Sentencing Council Guideline, evaluate the quality of the driving involved and the degree of the danger that it foreseeably created.

In this regard the deliberate causing of a crash in the outside lane of what was in all but name a motorway, even when the traffic was relatively light, speaks for itself. Likewise the degree of danger that the driving foreseeably created was great – whether from an initial concertina of crashes or in their aftermath. Thus I have no hesitation in concluding that, in the terms of the Guideline, and as has been conceded by each of your counsel, this was a Level 1 offence involving driving that involved a deliberate decision to ignore the rules of the road, and an apparent disregard for the great danger being caused to others.

There is, clearly, a spectrum of gravity as to the reason for a deliberate decision to ignore the rules of the road. The reason here, which is plainly at the upper end of the spectrum, was a joint enterprise to deliberately contrive a crash in order fraudulently to obtain money

It is clear that fraud by way of “crash for cash” is widespread. Indeed the latest available figures from the Fraud Insurance Bureau show its annual cost to be in the order of £392 million, which has a significant impact on the premiums paid by customers of insurance companies. Hence a case such as this requires the court to underline that deterrence is one of the purposes of sentence.

As to the conspiracy to commit fraud itself, and in order to avoid double counting, I observe only that, as is conceded, the offence was pre-planned to some extent and involved a number of people. The amount of money that it was hoped to gain from the three fraudulent applications is not entirely clear. However it is clear enough for me to proceed upon the basis that it was, in all, more than £5,000 but less than £20,000.

The only mitigating feature relied on in relation to the offence of causing death by dangerous driving is the fact that Miss Gill’s death was contributed to by the careless driving of Mr Lee, which was its immediate cause. However, in the very particular circumstances of this case, not least the degree of danger into which your joint actions put Miss Gill, I do not regard that mitigation as carrying the weight that it might in other circumstances.

As to the offence of doing acts tending and intended to pervert the course of justice in your cases, Kowalczyk & Bielawski, I am required to consider three matters – the significance of the substantive offence to which the perverting of the course of justice related (in this case a road traffic fatality); the degree of persistence (some in your case Kowalczyk, and quite some persistence in your case Bielawski); and the effect on the course of justice itself (which, no thanks to you, was not ultimately perverted).

There is also the difference between you that you, Bielawski, pleaded guilty at the Plea and Case Management Hearing, and are thus entitled to full discount for that plea. In the end it seems to me that that discount equalises the sentence between the two of you, the more so as, in each of your cases I propose (additionally) to reduce the otherwise appropriate sentence in accordance with the principle of totality to which I have already made reference.

Kowalczyk

You are 32 years of age. I have taken into account the content of the PSR. You are of previous good character, and your employers speak well of you. I bear in mind everything that has been said on your behalf.

On Count 2, causing death by dangerous driving, I have taken as my starting point (in accordance with the Guideline) a sentence of 8 years imprisonment. Having considered the aggravating feature that the reason for the deliberate decision to disregard the rules of the road was a joint enterprise to deliberately contrive a crash in order fraudulently to obtain money (which also effectively covers the conspiracy to commit fraud alleged in Count 1), which in turn created a grave level of danger, and the mitigating features advanced (in particular the role of Mr Lee), it seems to me that the aggravating feature significantly outweighs the mitigating features.

In the result, the sentence that I impose upon you on Count 2 is one of 10 years imprisonment. You will be disqualified from driving for 5 years, and until you pass a driving test. Your licence will be endorsed.

The sentence on Count 1 is a nominal one of three months' imprisonment concurrent.

On Count 6, taking account of all the matters in relation to the offence of doing acts tending and intended to pervert the course of justice to which I have already made

reference, the sentence that I impose will be one of three months' imprisonment consecutive.

The total sentence in your case is thus one of 10 years and three months' imprisonment. 19 days spent on remand will count towards that sentence.

For the reasons advanced by your counsel, I do not make a deprivation order in relation to your VW Passat.

Bielawski

You are 24 years of age. I have taken into account the letter from your girlfriend which speaks very well of you, and the content of the PSR in your case. I ignore your previous conviction and treat you as a person of good character. I bear in mind everything that has been said on your behalf.

For the reasons that I have already explained to Mr Kowalczyk the sentence that I impose upon you on Count 2 is one of 10 years imprisonment. You too will be disqualified from driving for 5 years, and until you pass a driving test. Your licence will be endorsed.

The sentence on Count 1 is a nominal one of three months' imprisonment concurrent.

On Count 6, taking account of all the matters in relation to the offence of doing acts tending and intended to pervert the course of justice to which I have already made reference, the sentence that I impose will be one of three months' imprisonment consecutive.

The total sentence in your case is thus also one of 10 years and three months' imprisonment. 19 days spent on remand will count towards that sentence.

As in Kowalczyk's case, and for the same reasons, I do not make a deprivation order.

Skowron

You are 25 years of age and of positive previous good character. I have taken into account the PSR in your case, and everything that has been said on your behalf.

For the reasons that I have already explained to Mr Kowalczyk the sentence that I impose upon you on Count 2 is one of 10 years imprisonment. You too will be disqualified from driving for 5 years, and until you pass a driving test. Your licence will be endorsed.

The sentence on Count 1 is a nominal one of three months' imprisonment concurrent.

Hence the total sentence in your case is one of 10 years' imprisonment, less 19 days spent on remand.

Okrutny

You are now 23 years of age. You fought the case on Count 6 with a wafer thin defence and were, unsurprisingly, convicted. Hence you have demonstrated no remorse for your crime which was, judged by the necessary approach that I have set out whilst dealing with the first three defendants (including the fact that this was, overall, an investigation into a fatality) both serious and persisted in – albeit that you eventually admitted the truth relatively shortly after your false witness statement.

However, you were only 21 at the time, and are of previous good character, and were (but only to a limited extent) somewhat naïve. Nevertheless your offence included a witness statement which I have no doubt you signed knowing that you were representing that the contents were true, when they were false.

I have taken into account the content of the PSR in your case together with everything that has been urged on your behalf, including the fact that you work very hard.

However, I have no doubt that the custodial threshold is passed, and that the sentence must be immediate. It must be remembered, in comparison, that the sentences imposed upon Kowalczyk & Bielawski's have been significantly reduced for the reasons that I have already explained.

The sentence that I impose upon you is one of 12 months' imprisonment, less 14 days spent on remand.

Lee

I have set out the facts of your offence at some length already.

I treat you as a person of good character, and take into account the content of the PSR in your case, and of everything that Miss Henson has so ably said on your behalf – including the authority to which she referred me.

Albeit that the initial crash and all the danger that resulted from it was nothing to do with you at all, it seems to me that your driving fell between the first and second levels set out in the Guideline in relation to offences of causing death by careless driving, and that it requires an immediate custodial sentence.

The sentence that I impose is one of twelve months' imprisonment. You will be disqualified for 12 months, and (in view of the circumstances of the offence) will be required to take a test before you can drive again. Your licence will be endorsed.