

DCCC 514/2015

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
CRIMINAL CASE NO 514 OF 2015

HKSAR

v

Wade, Ian Francis

Before: HH Judge Woodcock

Date: 2 October 2015 at 11.44 am

Present: Ms Lam Hiu-man, PP of the Department of Justice, for HKSAR
Mr Jonathan Midgley, instructed by Haldanes, for the defendant

Offence: (1) Dangerous driving (危險駕駛)
(2) Driving an unlicensed vehicle (駕駛未領牌車輛)

Reasons for Sentence

1. The defendant has pleaded guilty to dangerous driving and driving an unlicensed vehicle.
2. The dangerous driving charge involves four other vehicles.
3. The facts are as follows. On 5 December 2014, between 8 and 8.40 pm, on the way home from a work function, the defendant hit the first vehicle. He hit a parked truck. From the photographs, he hit it with his mirror at a speed of about 20 to 30 kilometres per hour. The driver of that truck followed the defendant to stop him, and did stop him some 230 metres away. There the defendant had stopped his vehicle behind the second vehicle.
4. This second vehicle was parked, and there was no driver in the second vehicle. When

the defendant stopped, the driver of the first vehicle approached him and spoke to him. However, the defendant drove away, but not before he hit the bumper of the second vehicle. The driver later identified the damage to the police.

5. The defendant drove along the Eastern Corridor to Tai Tam Road, and on Tai Tam Road the defendant was seen by another driver, PW4 weaving and driving unsteadily at a speed of about 15 to 20 kilometres per hour. That other driver witnessed the defendant sometimes crossing over into the other lane. At a point on Tai Tam Road, the defendant drove over double white lines into the other lane and touched the leg of a motorcyclist who was sat on his stationary motorcycle. The motorcyclist was able to jump out of the way. He was not injured. His bike, however, was knocked over by the defendant's vehicle.

6. PW4 was still following the defendant at this stage. He witnessed this third collision.

7. The motorcyclist then approached the defendant, and he said the defendant did not respond to his questions. He looked tired, and he could smell alcohol. The motorcyclist told the defendant not to drive away. However, the defendant did, and as he drove away, he scratched the motorcycle again.

8. PW4 at this stage was still following the defendant, and told the police the defendant continued to drive very slowly, still at 15 to 20 kilometres per hour, but was weaving in and out of his own lane, and it was not long after, some 400 to 500 metres from the collision with the motorbike, that the defendant hit the fourth vehicle, and it was at this stage the defendant got out of his own vehicle. He was seen trying to open the door of the fourth vehicle. When he was unsuccessful, he got back into his own car.

9. The police were then called. When they arrived, the defendant was breathalysed. He was breathalysed at the scene and then breathalysed at Stanley Police Station, where he accepts that he was over the legal limit; determined to be at a Tier 3 level.

10. From the Facts and the photographs I have seen, the four vehicles were slightly damaged. Nobody suffered any injury, and the defendant quite frankly told the police that he does not recall the details of his journey or the collisions.

11. I do not have any details as to the extent of the damage or the cost of the damage from the Prosecution.

12. In mitigation, I have heard that the defendant is 75 years old. He is an Englishman who has been in Hong Kong for 34 years. Until now he has been a pillar of Hong Kong society. Not only is he heavily involved with the Red Cross, he is a vice patron of the

Community Chest. He has been awarded a silver Bauhinia Star from the Hong Kong Government and received something equivalent from the Italian Government.

13. At 75 years old, the defendant has no criminal convictions. He has had his driving licence for many, many years, and has one traffic record in 2009. It has nothing to do with poor driving manner.

14. This is a fall from grace for a man who has prided himself on having an unblemished reputation. I am sure his embarrassment and anguish is acute and his remorse genuine.

15. After the defendant was charged, he sought the help of Professor Peter W H Li, who has supplied defence and the court with a very detailed clinical psychological report. I do not intend to repeat the details of this report. Professor Li also gave evidence on behalf of the defendant in mitigation.

16. I am satisfied that his evidence and his report is not biased in favour of the defendant. It is entirely independent. Clearly, from the report, the defendant's professional life has been very successful, which sadly seems to have been to the detriment of his family life. From the report, the defendant told Professor Li that he was unaware of how unhappy his wife was until she began divorce proceedings in 2012. What then proceeded was an extremely acrimonious divorce. This took two years, and they were finally divorced in May 2014. He has told Professor Li that he was devastated then and is still now. Not long after divorce was finalised in 2014, he joined a blue chip company in Hong Kong in a very responsible and demanding role when, at 74 years old, he could have considered slowing down.

17. In December 2014, less than six months later, he committed this offence. Professor Li diagnosed the defendant with an adjustment disorder with depression. He was clearly not himself when he committed this offence.

18. The defence do not in any way try and submit that this offence is not serious, but it is clear from the report and from mitigation I have heard that there are reasons that it came to this for the defendant.

19. From the report, the defendant does not in any way make excuses for himself, nor does Professor Li. The report does emphasise how the defendant's health, both physically and mentally, had deteriorated over the last two years. From a physical point of view the defendant has even had to be hospitalised for symptoms that doctors do not seem to be able to treat. From a mental point of view, Professor Li is of the opinion the defendant does now have a very gloomy outlook on himself. He feels uncertain. He feels that this is now the beginning of the end for him and he is very vulnerable, intensely lonely, and

regrets losing his entire family.

20. Professor Li explains how all these factors have culminated in not only a disorder, but leading up to this offence. At paragraph 68 of his report, Professor Li says: “Instead of wilfully tempting his luck with the law at the time of the offence, Mr Wade was simply so depleted physically, emotionally and psychologically that he lost his better judgment, resulting in having an unrealistically low sense of danger.”

21. This is not a case where the driver was young, reckless and irresponsible. This is a case where clearly, the defendant has acted out of character. There is a tangible history and tangible reasons that led to this offence. Professor Li is sure that the defendant was unaware at the time of his mental disorder and depression, and because he was unaware of it, he did not address it. He will address it now. Professor Li is also of the opinion that there is zero chance of the defendant reoffending; not only a driving offence, but any offence.

22. I am well aware of the authority R v Cooksley and Others [2003] 3 All ER 40 and the aggravating factors that case considers relevant where driving dangerously is concerned. I am also well aware of the authority HKSAR v Poon Wing Kei [2007] 1 HKLR 660. The Court of Appeal held that:

“While a list can be drawn up of aggravating and mitigating factors, a sentencing court must however look at the overall circumstances and the overall culpability of the offender. In assessing the overall seriousness of a crime, culpability is often the dominant factor.”

23. Here, according to the authority of R v Cooksley, what is the aggravating factor is drink driving. In Poon Wing Kei, culpability is deemed to be often the dominating factor.

24. In this case, the defendant does deserve to be blamed. He is responsible for his actions, and that is what culpability means. But here, I do see extenuating factors that could have led to this offence, and Professor Li, as an expert, is of the view that they did lead to this offence.

25. I accept that the defendant was not even aware he was suffering not only physical ailments but mental health issues that led him not to be himself. I am sure if he was himself, he would not have driven home that evening after drinking.

26. I have been given several authorities to assist me. They are not of much assistance. The prosecution has referred me to HKSAR v Lam King Sing DCCC 190/2015. In that case, the defendant, after driving dangerously, went out of his way to attempt to pervert the course of justice, and deserved a custodial sentence. In the authority HKSAR v Ip Kwok Leung DCCC 24/2012, that driver drove dangerously after taking ketamine.

Knowing he had consumed ketamine, he got behind the wheel of a car. He had a poor criminal record; was a drug addict and a drug trafficker. In another authority, HKSAR v Lee Chun Kit DCCC 820/2011, I sentenced that defendant to a term of imprisonment after he drove along the Tolo Highway chased by police in several vehicles and knocking a motorcyclist off his vehicle.

27. In all those cases, those defendants did deserve custodial sentences.

28. Mr Wade, please stand up. Here I do accept mitigation put forward on your behalf, and I am of the view that I can be merciful under all the circumstances. I do not find it necessary to consider a custodial sentence, nor, in that case, a suspended sentence. It is highly unusual not to consider a custodial sentence appropriate, but in this case, having considered what is said on your behalf and Professor Li's report, as well as the facts of the manner in which you drove dangerously, I can depart from the norm.

29. For Charge 1 I will impose a financial penalty of \$30,000. You are disqualified from driving any class of vehicle for 18 months from today. You will have to, if you wish to get your licence back, attend a driving improvement course within the last 3 months of that disqualification period. If you do not, you will not get your licence back.

30. I have to warn you that if you drive in the next 18 months whilst disqualified and you are charged with that offence, that will be a custodial sentence. This is because you will not be insured in the next 18 months.

31. For Charge 2, I impose a financial penalty, one of \$3,000. The total penalty is \$33,000.

(A.J. Woodcock)
District Judge

