

240.19 *Single misjudgement/Momentary inattention*

R v Farwell 2013 EWCA Crim 2194 D pleaded (full credit) to death by careless driving. D was the owner of a motor repair workshop and was in possession of an Ariel Atom sports car which required servicing. The car has been described as having similar acceleration to a 1,000cc motorcycle. D contacted B, a motor sport enthusiast and the boyfriend of D's niece, exchanging text messages containing photographs of the vehicle. It was arranged that B would accompany D on the test drive following the service. During the drive, D changed down in gear in order to accelerate but reapplied the power too quickly which caused the wheels to lose traction. The vehicle hit a kerb, travelled across the carriageway and into trees and bushes, with the nearside striking a tree. Both men were seriously injured but B did not recover and died six days later. A basis of plea was agreed whereby the crash was attributed to unduly harsh acceleration. D was aged 46 and a man of positively good character, a fact highlighted in the PSR and in many testimonials provided to the court. Held. The Judge was not entitled to form the view the crash was caused by D's wish to "show off" to B as this formed no part of the agreed basis of plea. In light of the significant mitigating factors (presumably his own injuries, his good character and that the victim was soon to join his family) present in the case, **3 months** not 8. 12 months' disqualification not 24.

R v Smart 2014 EWCA Crim 1119 D pleaded to causing death by careless driving. At about 1.30pm, D was driving along a road. She was not speeding, nor was she distracted by a mobile phone or other distraction. V, aged 80, was crossing the road. A witness stated that V seemed unaware of D's vehicle approaching but also saw that D made no attempt to avoid V or to brake or stop. It seemed that D simply did not see V. She drove into V who suffered spinal injury and subsequently died. D brought her car to a stop and remained at the scene. When interviewed, she admitted that she had not seen V but could not explain why. D would have had a clear view of V for six seconds before impact. D was aged 59 and had no previous convictions. She was of 'positively excellent character'. Held. This was not a Category 1 case, as found by the Judge. In this case, D was driving in a perfectly lawful fashion without any aggravating features and her fault was an unexplained failure to stop or steer her vehicle during the six seconds that V was in her sight. This fell into the middle Category, probably somewhere in the middle of that. Consideration should have been given as to whether an immediate custodial sentence was necessary. A custodial sentence would not be said to be wrong in principle given the guidelines, but...a sentence which would equate with the period of the custodial sentence which D had already served, namely the equivalent of 4 months' imprisonment, would have been sufficient. Furthermore, that should have been **suspended**. She had served approximately 2 months. To achieve that end, **4 months** not 9.

Note: In motoring terms, failing to look for six seconds is a long time. The irresistible inference is that D was doing something in those six seconds and did not want to say what it was. If you take that into account and the harm D caused, 9 months appears correct. Ed.

See also: *R v East* 2014 EWCA Crim 1651 (Plea (10%). D, driving a coach full of students, failed to see V, riding a motorbike, and to give way. V hit D as D pulled out from a junction. V's driving was not at fault and he had no time to avoid D. D may have had a restricted view because of another vehicle. D aged 67 had a good driving record. Held. All surrounding circumstances must be considered, including D's inattention. Passengers and busy traffic are not significant aggravation. The appropriate sentence would have been a **community order**, not 10 months.)

240.20 *Speeding*

R v Pattison 2014 EWCA Crim 544 D was convicted of causing death by careless driving (×2). About 1.30 pm, he was driving his lorry. The weather and visibility were good. A lorry driven by P broke down. The extremely thick smoke drifted from it. For ¼ of a mile D could see it. Behind that smoke was an Army ambulance ahead of D which went into the smoke and did not slow down to any appreciable extent, if at all. It collided with the rear of P's lorry. D's lorry collided with the ambulance, pushing it further into P's lorry. V1, aged 24 and V2, aged 40, in the ambulance were killed. D had been travelling at 48mph but had reduced that to 39 mph some 20-30m before the impact. His speed was estimated at 30mph at the impact. It was estimated that he had commenced braking 1.5 seconds before the impact. D had been driving lorries for 30 years. D was aged 53 at appeal and 'of impeccable previous character' with a totally clean driving licence. The PSR detailed D's complete remorse. The Judge placed the driving into the highest category in the guidelines, falling not far short of dangerous driving. Held. D was driving a very heavy vehicle capable of doing immense damage. D must take his share of responsibility. He saw the smoke but elected to drive on without slowing down to any appreciable effect. The fact that others, including V1, had driven too fast and had not slowed down did not justify the conclusion that D was not driving too fast.¹ The Judge found that anyone driving into the thick smoke was taking a risk as to what might be within it. She was very well placed to make that assessment. It was incumbent on drivers to slow down accordingly. As a result of those findings, there could be no criticism of the categorisation of the offence. Consequently, **18 months** was not excessive. A 6-year disqualification order was excessive. 2 years would have sufficed.

R v Shadbolt 2014 EWCA Crim 1131 D pleaded (20% credit) to causing death by careless driving. D was driving his Corsa with his fiancé, F, in the front passenger seat. He had only been driving for a few months. It was sunny and dry. D was driving on an A-road and nearly missed his intended exit. He overtook a vehicle, returned to the inside lane and made a very late exit onto the slip road. The slip road at that point was already separated by chevrons. The slip road contained a sharp bend up ahead. He lost control on a severe bend, crossed a grassy area and drove into the opposite slip road, crashing head-on into a car driven by R. In R's car were G in the front passenger seat and V in the rear. R and G were badly injured and V died. In his basis of plea D accepted that a) he was driving too fast for the severe bend that was ahead of him and b) he was not familiar with the bend. D was aged 30 and had no convictions. He was very badly shocked by what happened and he had expressed strong remorse. R and G expressed a degree of forgiveness and asked for mercy. Held. It was Category 1. There was serious injury to two people in addition to V's death, which constituted a seriously aggravating feature. The fact that D's fiancé was seriously injured was a mitigating factor, as is the fact that D had only been driving for a few months. It is also important to bear in mind that whilst this was [not over in an instant], it was a brief episode. With 20% credit, **15 months**, not 2 years.

240.23 Disqualification For how long

R v Farwell 2013 EWCA Crim 2194 (Acceleration causes loss of traction. **12 months** not 24, see **240.19**.)

R v Ebrahimi 2014 EWCA Crim 841 D pleaded to causing death by careless driving. He approached a junction and failed to give way as required. D drove into the path of V's vehicle and a collision occurred. V's car had to veer into the other carriageway and collided with an articulated lorry. V suffered a severe brain injury and died. D was not insured to drive at the time of the offence. It was unclear whether D was aware that he was uninsured. D was aged 38 and had a conviction in 2005 for a number of motoring offences including driving without due care, driving whilst uninsured and failing to stop after an accident. D had lost his job as a forklift truck driver as a result of the accident. He found a job as a carpet fitter and had a wife and three children to support. 6 months suspended for 2 years was not challenged. Held. For

¹ The defence suggested that V1's failure to slow down as a result of the smoke created a false sense of security for D in relation to his speed. Ed.

disqualification, public protection was important. D's previous convictions justified a conclusion that D represented a continuing danger to road users in light of his conviction for this offence. The lack of a driving licence may inhibit D's ability to find and retain work, which was a relevant consideration. The appropriate range for disqualification in this case was 3 to 5 years. **4 years' disqualification**, not 7.

See also: *R v Pattison* 2014 EWCA Crim 544 (Speeding into some smoke. Lorry hits ambulance which hits another lorry. Two died. Impeccable character. **2 years** not 6. See **240.20** in this update.)