IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0048/2016

THE QUEEN

v.

ANASTASIA WATSON

Appearances:	**Mr. Scott Wainwright for the Crown**
	Ms. Amelia Fosuhene of BRADY for the Defendant
Before:	**Justice Philip St. John-Stevens (Actg.)**
Sentence Hearing:	**1st February 2018**
Delivery of Decision:	**23rd February 2018**

HEADNOTE

Criminal Law – Death by careless driving – The Traffic Law *Section 79 – Aggravating factor – Excessive speed – Mitigating factor – Deceased a close friend – Sentencing Guidelines (the Cayman Islands and the United Kingdom) - Starting point –.Different maximums in the Cayman Islands and the United Kingdom – Sentencing Authorities.*

SENTENCE JUDGMENT

1. The Defendant, Anastasia Watson, pleaded guilty to an offence of causing death by careless driving, contrary to s.79 of the Traffic Law (2011 Revision).

2. This plea was entered on the 21st August 2017, the day upon which the Prosecution added a count of careless driving to an indictment which had averred only death by dangerous driving.

MATERIALS

3. I have read with care the Prosecution Note for Sentence (dated 18th January 2018) and the accompanying materials and authorities, the Defence submissions, (undated), and the accompanying materials and authorities.

FACTS

4. On the 15th April 2015, shortly before 12.30 a.m. the defendant was driving a BMW in an easterly direction along Rum Point Drive in the direction of Frank Sound Road. In the front passenger seat of the vehicle was her friend, Kimberley Bush.

5. At the point of a left-hand bend in the road the Defendant lost control of the vehicle. The vehicle left the road and stuck a road sign, then a concrete wall and pillar. The tragic consequence of this was that Kimberley Bush died almost immediately upon impact.

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6. When the police arrived, the Defendant was seated on the ground, Kimberley Bush was still in the front passenger seat.

7. The reason for the loss of control of the vehicle was the speed of the vehicle when it attempted to negotiate the bed. At that point the road was flat, and when travelling west to east the visibility good.

8. The speed limit on that road was 50 mph. The calculated speed of the vehicle at the point of impact was 80.24 mph. The maximum speed at which the curve could be safely negotiated (the Critical Curve Speed) is 69.56 mph. No other contributory factors, either with the vehicle or the road, have been identified. The crash investigator opined from the striated tyre marks deposited on the road that the driver lost control, the vehicle yawed, and the defendant then overcorrected and vehicle slewed sideways to impact.

MITIGATION

9. In mitigation the defence counsel suggested that the defendant was only driving "just over the speed limit" but it was that the defendant had blacked out and it was this that accounted for the loss of control of the vehicle.

10. The Court indicated to the defence that it rejected that bald assertion of the blackout, unsupported by any evidence. The Court gave the defence the opportunity to call any evidence it wished. The defence declined, and accepted that the Court would sentence on the uncontroverted basis set out by the Prosecution.

THE LAW

11. The maximum sentence for causing death by careless driving is 7 years' imprisonment or a fine of up to CI$10,000, or both. Automatic disqualification of at least three years from the expiration of the prison sentence and the endorsement of the particulars of the offence on the defendant's driving record also follow.

SENTENCING GUIDELINES

12. May I first consider and identify this Court's principled approach to sentence. Guidance in relation to this is embodied in the Cayman Islands Sentencing Guidelines. They provide a framework for the proper exercise of judicial discretion promoting consistency of approach and the identification of factors which materially impact upon the assessment of the seriousness of an offence.

13. Paragraph 2 of the Cayman Islands Sentencing Guidelines provides that, in considering the seriousness of any offence, the court will consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.

14. I have also considered and applied the guidelines to assess the category of culpability and harm in this case.

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15. I remind myself that, to quote the guidelines:

> *"The culpability of the offender in the particular circumstances of an individual case should be the initial factor in determining the seriousness of an offence".*

16. I have had particular regard in this case to para.3.4 and the Guidance on the Custody Threshold.

17. The Cayman Islands Sentencing Guidelines do not provide specific guidelines in relation to the offence before the court.

18. There are such Sentencing Guidelines in England and Wales. The applicability of the Sentencing Guidelines in England and Wales are governed by statute. They are not law in themselves, and therefore are not directly applicable in the Cayman Islands. However their assistance and application in this jurisdiction are provided for in the Cayman Islands Sentencing Guidelines, which state:

> *"Those [SG - UK] guidelines have been regularly referred to and adopted by the courts into the laws of the Cayman Islands, with appropriate adjustments"*

19. The Court has regard to the fact that the equivalent offence in the UK carries a lower maximum of 5 years' imprisonment.

20. I turn to the UK Sentencing Guidelines.

21. In assessing seriousness, the Guidelines[1] set out the Determinants of Seriousness and common examples. One appositive to the case is:

[1] *Sentencing Guidelines Council, Causing Death by Driving, Definitive Guideline*

"*Inappropriate Speed of Vehicle:*

(a) Greatly excessive speed; racing competitive driving against another vehicle;

(b) Driving above the speed limit;

(c) Driving at a speed that is inappropriate for the prevailing road or weather conditions;

(d) Driving ...."

22. There no other example of determinate of serious relevant to this case.

23. The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving. The most serious level for this offence is where the offender's driving fell not that far short of dangerous. The least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility. Other cases will fall into the intermediate level.

24. The starting point for the most serious offence of causing death by careless driving is lower than that for the least serious offence of causing death by dangerous driving in recognition of the different standards of driving behaviour. However the top of the sentencing range for the most serious example causing death by careless driving is 3 years imprisonment – the same as the starting point for least serious offence of causing death by dangerous driving.

25. At page 15 paragraph 8 the guidelines state:

"*Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence*".

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26. In considering whether this offence falls within the highest category, that is where the offender's driving fell not that far short of dangerous, I have had regard to the Offence Guidelines for causing death by dangerous driving[2].

27. The least serious for dangerous driving is categorised as Level 3:

> *"This is driving that created a significant risk of danger and is likely to be characterised by: "Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions OR..... "*

28. Annex A of the Guidelines provides statutory definitions and examples:

> *"Annex A: DANGEROUS AND CARELESS DRIVING*
>
> ***Dangerous Driving***
>
> *A person is to be regarded as driving dangerously if the standard of driving falls far below what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous.*
>
> *Examples of the types of dangerous driving behaviour likely to result in this offence being charged include:*
>
> - *Aggressive driving (such as sudden lane changes or cutting into a line of vehicles) or Racing or competitive driving or Speed that is highly inappropriate for the prevailing road or traffic conditions*
> - *Disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate*
> - *Driving a vehicle knowing it has a dangerous defect or with a load which presents a danger to other road users*
> - *Using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use*
> - *Driving when too tired to stay awake or where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight*

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[2] Page 10 of the UK SG

Careless Driving

Careless driving is driving that "falls below what would be expected of a competent and careful driver" and a person is to be regarded as driving without reasonable consideration for other persons "only if those persons are inconvenienced by his driving".

Examples of the types of driving behaviour likely to result in an offence of causing death by careless or inconsiderate driving being charged are:

- *overtaking on the inside or driving inappropriately close to another vehicle*
- *inadvertent mistakes such as driving through a red light or emerging from a side road into the path of another vehicle*
- *short distractions such as tuning a car radio*

....

A typical piece of careless driving may be that it is a momentary negligent error of judgement or a single negligent manoeuvre, so long as neither falls so far below the standard of the competent and careful driver as to amount to dangerous driving."

29. This was not a case properly described as a moment of inattention. There was a period of driving the vehicle at excessive speed. Speed that was highly inappropriate to the prevailing road conditions. The vehicle, when it entered that bend, had reached, maintained or was certainly at a speed of at least 80 mph. It was a road that the Defendant was familiar with, she was not taken by surprise by the road or by any prevailing conditions. This was deliberate speeding at a greatly excessive speed.

30. In my judgment this case falls within the most serious category of careless driving – falling not far short of dangerous driving, with a starting Point 15 months' imprisonment, with a range of 26 weeks to 3 years.

31. Even if the Court erred in that assessment as to category in which it falls, it is within the upper end of the second category – with a starting Point 36 weeks with a Range of High Community Order to 2 years' imprisonment.

32. There would be an uplift to these sentences to reflect the higher statutory maximum in this jurisdiction.

33. A simple mathematical approach to an uplift would, by way off an example, result in a 15-month starting point, for a UK sentence, equating to a 21-month sentence in this jurisdiction. Although this approach is not dispositive, it is at least informative as to the level of uplift, and reflective of legislative intention.

34. I also note that the court has no power to suspend a sentence of imprisonment in this jurisdiction for this offence.

35. There are no additional aggravating factors as set out in the guidelines, save for a conviction in 2013 for an offence of speeding. As to those additional mitigating factors: The fourth, that the victim was a close friend, is clearly apposite.

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SENTENCING AUTHORITIES

36. The cases to which the Court has been referred are, at first instance, persuasive and often very informative. However each have their own/unique factual matrix and nuances which must be borne in mind when any comparative exercise is conducted.

37. I have considered carefully the authority ***Cayasso (Dwayne Bruce) v R***[3]. This provides a useful overview of a number of cases.

38. The case of ***R v Brassington (Jarod William)***[4] is of note, as case of death by careless driving. The feature of dangerous driving was excessive speed and loss of control, I acknowledge the additional feature absent in the case before me is the overtaking manoeuvre. A sentence of 18 months was upheld for an offence falling within the highest sentencing guideline category.

39. A most recent CICA authority is ***R v Walter (Dilroy Linwood)***[5]. That was a case of death by careless driving were the Appellant had lost control of his vehicle due to excessive speed and a failure to negotiate a bend. From paragraphs 15 - 18 of that CICA judgment there is analysis of a number of authorities[6] which have been of great assistance to this court.

40. There are number of authorities referred to by the defence that support the proposition that a sentence other than an immediate custodial sentence can meet the merits of a particular case. The court accepts that assertion.

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[3] Cayman Islands Court of Appeal (CICA) [2008 CILR Note 14]; Crim. Appeal No. 1/2008 (Ind. 67/06)
[4] [2010] EWCA Crim. 2726
[5] CICA Crim. Appeal No 2/17 – (Ind. 112/2014 in the Grand Court of the Cayman Islands, Unreported Judgment (Quin J) delivered 10th January 2017)
[6] ***R v. Tyson*** [2010] 2 Cr. App. R. (S) 96; ***R v. Tyro*** [2011] 1 Cr. App. R. (S) 113; ***R v. Laureano (Jefferson)*** Ind. 91/15; ***R v. Tibbetts (Nicholas Patrick)*** Ind. 71/15

MITIGATION

41. The Cayman Islands Sentencing Guidelines at paragraph 9 (and Section 4 Alternative Sentencing Law 2008) set(s) out the Court's approach to mitigating factors. In sentencing an offender and states that the Court should take into account mitigating factors relevant to both the offence itself and the offender.

42. There is a Social Inquiry Report (SIR) dated 17th October 2017. I have read with the care the contents, as I have a number of character references. The Court was also assisted by two witnesses who gave oral testimony as to the character of the defendant, the effect of this case and her response to it, and to her future.

43. The evidence from Nasaria Collette her Care Manager from the NVCO Foster Home provided compelling insights into the past, present and future of this defendant. She has had, without question, a difficult and troubled background. She has been working hard to become a fulfilled and valued member of society. She was described as maturing into a caring and positive individual. Her employer, David Palmeri, described how he witnessed, first hand, the devastating effect of the tragic events had upon the defendant.

44. The court has reflected carefully upon all the personal mitigation presented to the court.

45. The effect upon the Defendant of having caused the death of a near friend is noted by the court.

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46. The UK Sentencing Guidelines[7] provide(s):

> *"Where one or more of the victims was in a close personal or family relationship with the offender, this may be a mitigating factor. In line with the approach where the offender is very seriously injured, the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; mitigation for this reason is likely to have less effect where the culpability of the driver is particularly high."*

47. The obvious remorse is identified as personal mitigation. In this case I am in no doubt that this is genuine, and so provides powerful mitigation.

48. In this case there is compelling mitigation, such that the sentence will be reduced to fully reflect the same.

49. The plea of guilty was entered at the first available opportunity, I therefore apply a one-third discount to the sentence.

50. I take into account, and have reflected carefully upon all those matters urged upon behalf of the Defendant. I have reduced the sentence to reflect the same.

[7] *Sentencing Guidelines Council, Causing Death by Driving, Definitive Guideline* at page 5 para 23

SENTENCE

51. Anastasi Watson: You will be disqualified from driving for a period of three years from the expiration of the prison sentence and there will be an endorsement of this offence on your driving licence[8].

52. This is a tragic case. Such cases so often are. Your driving took the life of a person – a person who was a friend. No sentence should, in anyway be regarded as a crude measure of the tragic consequences.

53. Those driving motor vehicles must understand that they are in charge of an object that if mismanaged becomes potentially lethal. This case illustrates the significant risk of danger and tragic consequences of driving at excessive speeds.

54. There must be a term of imprisonment. No other sentence can be justified. The least sentence of the court is one of 12 months' imprisonment and that is what I impose.

Dated this the 23rd day of February 2018

St. John-Stevens J
Acting Judge of the Grand Court

[8] S.80(3)(b) The Traffic Law