

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0021/2017
5

6 THE QUEEN
7

8 v.
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10 CONROY WARRENTON NAIRNE
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14 **Appearances:**

Mr. Patrick Moran, Deputy DPP, for the
Crown¹

17 Mr. Nicholas Dixey of Nelson & Co. for the
18 Defendant

19 **Before:**

Justice Marlene Carter (Actg.)

20 **Sentence Hearing:**

21 21st July 2017

22 **Delivery of Decision:**

23 4th August 2017
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25 **HEADNOTE**

26 *Criminal Law – Death by Dangerous Driving – Sentence – Starting point –*
27 *Aggravating and Mitigating Factors.*
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¹ Mr. Scott Wainwright held for the Crown on the 4th August 2017

SENTENCE JUDGMENT

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1. This was indeed unfortunate incident resulting as it did in the death of a young woman who was a mother of one, a daughter and a sister.

2. The Defendant has entered a plea of Guilty to a one count Indictment of Causing Death by Dangerous Driving, contrary to s.75 (1) of the Traffic Law, 2011.

3. The facts that led to the charge against the Defendant are not in dispute. On the 14th of September 2015, at approximately 1:30 a.m., the Defendant was driving an Audi A4 motor vehicle northbound along West Bay road. The Deceased, Jessie Perry, who was the defendant’s partner, was the only passenger in the vehicle at that time. As the Defendant drove into the area of Public Beach, the West Bay Road curved to the right. The Defendant’s vehicle travelled into the wrong carriageway as it sought to “cut the corner” and the vehicle collided with the northern roadside curb and became airborne. The vehicle collided with several objects as it travelled through the air and eventually hit a tree. The vehicle burst into flames and came to rest on its roof with both occupants trapped inside. The defendant and the deceased were pulled from the burning vehicle. By this time the Deceased was engulfed in flames.



1 4. The Deceased received 2nd and 3rd degree burns to eighty percent (80%) of her
2 body. She died one week later from the injuries sustained in the collision. The
3 Defendant received minor burns from the accident.

4 5. The Crown produced evidence from CCTV footage taken from various areas
5 along the West Bay Road which revealed that the Defendant's vehicle was
6 travelling at approximately 104 mph in the area of Captain's Bakery and St
7 Matthew's University Halls of Residence. Also, when the vehicle passed the
8 Ritz Carlton Hotel the vehicle was travelling at approximately 52 mph. An
9 analysis of the scene of the accident established that the Defendant's vehicle
10 was travelling at approximately 127 mph when it collided with the curb at
11 Public Beach and that the critical curve speed for the bend in the road was 43.4
12 mph. The maximum speed limit on the stretch of road at the time was 40 mph.

13 6. The Defendant was interviewed by the police on the 1st of February 2016 on
14 suspicion of Causing Death by Dangerous Driving. He stated during the
15 interview that it was Ms. Perry's birthday and that they had been out that night
16 at a party in Rock Hole. They left the party to go for a drive in the Audi. He
17 claimed that he was driving at or near the speed limit at the time of the collision
18 and that his brakes had failed when he tried to apply them as he reached the
19 area of Public Beach. He also stated that they had been working properly up
20 until the collision.



1 The Crown produced evidence from an expert who examined the vehicle that
2 the brakes had been fully operational at the time of the collision and further,
3 that there were no mechanical defects that contributed to the collision.

4 7. The Defendant was charged with Causing Death by Dangerous Driving on the
5 3rd of March 2017. On the 2nd of June 2017 at the first hearing in the Grand
6 Court the Defendant entered a guilty plea to the sole count on the indictment.

7 8. Apart from written submissions filed by the Crown and for the Defendant, I
8 also heard very helpful oral submissions at the sentencing hearing from both
9 counsel. I have also considered the Social Inquiry Report (SIR) for which the
10 Defendant was interviewed. I accept that he understands and regrets his part in
11 this incident that has led to the death of Ms. Perry and I also accept that his
12 remorse is genuine. I have also read the Victim Impact Statements submitted
13 by the Deceased's mother and brothers.

14 9. It is to the Defendant's credit that they all have asked this Court, if it sees fit,
15 not to sentence the Defendant to a term of imprisonment. I have also noted that
16 the Defendant has maintained a close relationship with this family, especially
17 the deceased's young son.



1 10. The maximum sentence for the offence of Causing Death by Dangerous
2 Driving is 10 years' imprisonment. In 2002 the *Chief Justice's Guidelines*² set
3 the tariff at 5 years' imprisonment for offences of Causing Death by Dangerous
4 Driving involving alcohol, speed or other aggravating factors.

5 11. Counsel for the Crown and for the Defendant both referred this court to
6 Guidelines set by the Sentencing Council of England and Wales, (the "*UK*
7 *Sentencing Guidelines*") for Causing Death by Dangerous Driving. The
8 maximum sentence in the UK for the offence of Causing Death by Dangerous
9 Driving is 14 years' imprisonment.

10 12. Council for the Defendant submitted that the court should not find that the facts
11 of this case would fall to be considered for sentence at Level 1 under the UK
12 Sentencing Guidelines – Level 1 being for the most serious of offences, unless
13 the court finds that the driving was necessarily worse than that of a standard
14 that merely created a substantial risk of danger. Counsel for the Defendant
15 submitted that the Court should find that this was a Level 2 case of offending
16 and that the court should take 4 years' imprisonment as its starting point with a
17 range of sentence between 2.4 years and 4.2 years.



² *Statement on Tariffs and Guidelines for Sentencing for Certain Offences (2002)*

1 13. The Crown submitted that the Court should find that this was within the top tier
2 of seriousness at Level 1 and highlighted that the starting point for such an
3 offence is 8 years' imprisonment in the UK, with a range of between 7 to 14
4 years. The Crown suggested that in the instant case the starting point should be
5 6 years' imprisonment with a range of 5 to 10 years. I bear in mind that while
6 this Court may look to the UK Sentencing Guidelines, that they are just that,
7 guidelines, and I am in no way bound to attempt a rote approach to applying a
8 percentage uplift to take account of the difference in maximum sentence for the
9 offence in the Cayman Islands.

10 14. The Crown submits that there are a number of aggravating factors in this case.
11 The first of these is that there was a prolonged course of bad driving, involving
12 a flagrant disregard for the rules of the road. The evidence is that when the
13 Defendant was first caught on CCTV at St. Matthew's University Halls of
14 Residence he was travelling at over 100 mph and that at the point of collision
15 this speed had reached 127 mph. The distance between these two points was
16 stated to be approximately 3.3 km.

17 15. The second aggravating factor identified by the Crown for this Court's
18 consideration is that the Defendant must have been aware of the risk he posed
19 to others, not just the deceased, by driving in such a manner on this stretch of
20 road at night.

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1 16. The third aggravating factor advanced by the Crown was the greatly excessive
2 speed at which the Defendant was driving. The Defendant at the point of
3 impact was driving at 127 mph – in excess of three times the legal limit of 40
4 mph.

5 17. Apart from a consideration of the aggravating factors, the court must also
6 consider the mitigating factors offered on behalf of the Defendant. I take into
7 account the genuine remorse shown by the Defendant, the reports and pleas
8 expressed in the SIR and the Victim Impact Statements, as well as the
9 references provided on the Defendant's behalf which all attest to his positive
10 qualities. I also do consider the relationship between the Defendant and the
11 Deceased who was described as the love of his life and that the Defendant did
12 himself sustain injuries as a result of the collision.

13 18. I have also considered the authorities cited by counsel for this court's
14 consideration, especially the cases of *R v Terry*³; *R v Cayasso*⁴; *R v Morgan*⁵;
15 and *R v Watler*⁶ which are all cases concerned with sentencing for cases of
16 Causing Death by Dangerous or by Careless Driving. While these are
17 instructive as to the manner in which these courts have dealt with similar cases,
18 I remind myself that I must determine the sentence solely on the facts of this
19 case.

³ *R v. Terry (Ashley Leticia)* Ind. 50/2015 Unreported Judgment (Quin J.) delivered 20th December 2016

⁴ *R v. Cayasso (Dwayne Bruce)* [2008] CILR Note 14

⁵ *R v. Morgan (Jarrett Eniko)* Ind. 5/2011 Unreported Judgment (Quin J) delivered 12th September 2011

⁶ *R v. Watler (Dilroy Linwood)* Ind. 112/2014 Unreported Judgment (Quin J) delivered 10th January 2017



1 19. Having carefully considered all the relevant facts of this case, I make the
2 following observations.

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4 20. It is clear on the facts presented that when the Defendant was seen passing St
5 Matthew's he must have been travelling at a speed in excess of the speed limit
6 of 40mph for some time before he was first seen on the CCTV at that location.
7 The evidence is that he had already reached 100 mph – two-and-a-half times
8 that speed limit. Also of relevance is the fact that the stretch road on which the
9 Defendant was driving at that speed for over 3.3km is of course the Seven Mile
10 Beach stretch which is one of the busiest stretches of roadway in the Cayman
11 Islands even at 1:30 am because of the various restaurants, hotels and other
12 places of business located there.

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14 21. The Court has also had regard to one of the more recent authorities drawn to the
15 Court's attention, that of *R v Watler*⁷. In the case of *Watler*, a case of Causing
16 Death by Careless Driving, where the Defendant was found to have been
17 driving at approximately 92 mph in a 25 mph zone, Justice Quin Q.C. observed:

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19 *"Nobody should be driving a car at 90 miles per hour on any road in the*
20 *Cayman Islands. It cannot be described as anything other than*
21 *"terrifyingly excessive."*
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⁷ *supra*

1 22. I echo those sentiments. How much more frightening to think that the
2 Defendant, with his seemingly unbridled need for speed, was driving at almost
3 35 miles in excess of what the Learned Judge condemned as “*terrifyingly*
4 *excessive*”.

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6 23. The nature of the Defendant’s driving, as I have referred to above – that is,
7 driving over the speed limit for over 3.3 km, at speeds in excess of 100 mph
8 along West Bay Road and at three times the limit at the point of impact – must
9 be one of the most serious instances of deliberate bad driving, of a flagrant
10 disregard for the rules of the road and for the danger to be caused to others, of
11 which this court hopes to ever hear. I will not classify it as anything short of
12 Level 1 under the UK Sentencing Guidelines. I find that the appropriate
13 starting point in this case should be 6 years’ imprisonment, with a sentencing
14 range of 5 - 9 years.

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16 24. I find that the speed at which the Defendant was travelling was a significant
17 aggravating factor which, in and of itself, warrants a significant increase in the
18 sentence over the tariff. In this case there were other aggravating factors for the
19 court’s consideration. The aggravating circumstances outweigh the mitigating
20 factors and, as such, a significant uplift is warranted.

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22 25. I find the appropriate sentence in this case to be 8 years’ imprisonment.



1 26. I have taken into account the genuine remorse expressed by the Defendant and I
2 also take into account the stirring victim impact statements from the mother and
3 brothers of the deceased. I bear in mind, however, the fact that the Defendant
4 was injured in the accident. I also bear in mind the close relationship between
5 the Defendant and the Deceased. However, I also bear in mind that matters to
6 be considered in mitigation have considerably less effect on sentence where, as
7 in this case, the culpability of the driver is particularly high.

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9 27. I will discount the sentence by twenty-five percent (25%) to meet the fact that
10 the Defendant entered a guilty plea when the Indictment was first put to him. I
11 find that it was reasonable to have expected an indication of willingness to
12 plead even earlier in this case. I consider that this was not a case in which the
13 Defendant was interviewed immediately after the incident and where it might
14 be argued that the incident was still somewhat unclear. The police interview
15 did not take place until March the following year, approximately five months
16 from the date of the incident. The evidence that the Defendant did proffer that
17 the cause of the accident was faulty brakes, when the expert evidence is that the
18 brakes were fully operational at the time of the collision, does also cause the
19 court some concern.



1 28. I add to these factors the strength of the prosecution case: the evidence from the
2 CCTV cameras, the evidence of the driver who was overtaken by the Defendant
3 as to the speed at which he was travelling and the evidence of the expert for the
4 Crown that there were no mechanical defects which contributed to the collision,
5 as my reasons for departing from the guidelines as to the usual discount to be
6 given on a guilty plea.

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8 29. The sentence of the court is that the Defendant will serve a term of
9 imprisonment of 6 years. Any time that the Defendant has spent in custody will
10 be deducted from that sentence. The Defendant will be disqualified from
11 holding or obtaining a driver's licence for a term of five years, and such period
12 is to run from today's date.

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17 **Dated this the 4th August 2017**

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**Carter J (Actg.)
Acting Judge of the Grand Court**

