

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0078/2015

THE QUEEN

V.

SIMON CHRISTOPHER COURTNEY



Appearances:

Ms. Tricia Hutchinson with Mr. Greg Walcolm
for the Crown

Mr. Trevor Burke Q.C. with Mr. Laurence
Aiolfi of Samson & McGrath for the Defendant

Before:

Hon. Justice Malcolm Swift Q.C. (Actg.)

Trial by Jury:

8th to the 17th June 2016

Sentencing Submissions heard:

6th July 2016



SENTENCE RULING

1. You have been convicted by the jury on the clearest possible evidence of reckless driving and recklessly inflicting grievous bodily harm to Mr and Mrs Schubert. They suffered dreadful injuries and you are fortunate not to have been facing more serious charges. I dread to think of the consequences for them if this accident had occurred at a more remote part of the island in the absence of witnesses willing to rush to their side, to administer first aid and to call the emergency services.

2. It is clear to me that you would have fled the scene of the accident, as you did here, and would have left your victims lying in the road where they – Mr. Schubert, in particular – may well have succumbed to their injuries.

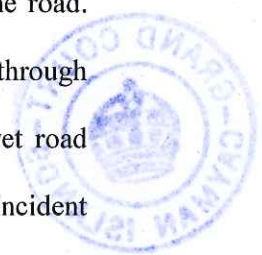


3. Your first thought was not for your victims but for your driving licence. Whether or not you had the means at your disposal to call 911 (and I am myself satisfied on the evidence that you had a cellphone in your possession – though probably not a phone for which the number was provided to the Police), you did not, in my view, make the slightest attempt either to call the emergency services or to render assistance. Your repeated assertion that you were the first responder rendering first aid to Mrs. Schubert was in my view a wicked lie. Your brief expressions of sorrow before you fled the scene were disingenuous. But of course, it was necessary as part of your defence to deny that you expressed any sorrow at the scene for what you had done. To have admitted it would have supported the evidence that you fled the scene without trying to help your victims.



4. Your failure, despite a determined search, to find any medical expert willing to support your claim that, in the accident, you suffered a concussion (or, as you have now told the Probation Officer, actual brain injury to a section of the back of your brain), demonstrates to me the lengths to which you have been prepared to go to escape liability for these events. You spent around 12 hours after the accident hiding from the Police. You finally went home only when you thought the effects of the alcohol you had consumed had left your system.

5. As for your driving, I have no doubt whatsoever that you were the worse for drink. Your actions afterwards confirm that conclusion and you have cynically prevented this court from knowing the truth about the amount of alcohol in your blood. I suspect that you do not even know yourself because of the amount of champagne you had drunk which is likely, on the evidence heard in the trial, to have been the equivalent of the best part of an entire bottle.
6. As the jury has found, when you were incapable of driving safely due to the amount of alcohol in your system, you climbed behind the wheel of this track-inspired Mustang Shelby - capable of reaching 60mph in 3.5 seconds - and drove it along a wet road without a thought for whether that was wise in your condition. If you even considered or recognized the risk you were taking, you completely ignored it. By their verdict the jury has rejected your attempt to blame this accident on standing water in the road. There was none in the carriageway. Your driving was, quite simply, impaired, through drink. It affected your judgment and you accelerated too harshly on the wet road surface. I accept that you were driving in a straight line and that the entire incident lasted just seconds.
7. However, witnesses heard the car's engine revving or gunning and I am satisfied that what they heard was you accelerating harshly before you finally lost control of the vehicle. This car would require 100% concentration by a sober driver to be driven safely in any road conditions.



I find as a fact that you had a warning of the possible consequences of your actions as soon as you drove onto the main road because, in evidence, you admitted that the car lost traction even in those first few seconds and I am satisfied that was due to your inability to control this vehicle safely on a wet road surface. Instead of stopping immediately, you continued to drive and to accelerate on a surface that was not just potentially, but actually, slippery. I accept, as did the jury, the evidence of the eye-witnesses that you were driving too fast for the conditions. The inevitable happened.

8. The conduct of your defence has done you no credit. You have suggested that the witnesses to these events, even those who rushed to the aid of your victims, have not told the truth about your actions and you have lied about your possession of a cellphone and about your post-accident conduct. You persisted in your lies at trial and you repeated them on oath to the jury. I see from the Social Inquiry Report that you are still in denial, repeating to the Probation Officer a story about the accident and the circumstances surrounding it that the jury has unanimously rejected. You have tried to evade your responsibility for these events at every turn. Whatever may be said about your glittering career in the law, your behaviour in this case has been quite simply shameful.

9. I have read the victim impact statements. Mrs. Schubert says that, despite her continuing health problems, she is grateful to be alive. Mr Schubert is not so thankful. His life has been turned upside down. He will be in constant pain and discomfort for the rest of his life. By your selfish and thoughtless actions you have made his life unbearable.



10. You have also destroyed your own life and your career by your actions and I accept that this is for you of considerable gravity (but nowhere near as grave as the consequences for the Schuberts). I accept the effect that this conviction and sentence will have on your wife and possibly on her health. This is a time when family members will be required to respond to her needs and rally around her. I do not understand how the Probation Officer can believe that you present a low risk of re-offending when you were on bail for driving offences at the time of these offences.
11. The maximum sentence for reckless driving is 2 years' imprisonment – *s.76(b) Traffic Law (2011 Revision)*. The maximum sentence for inflicting grievous bodily harm is 7 years' imprisonment – *s.204 Penal Code (2013 Revision)*. In this jurisdiction there is no equivalent to the UK offence of causing serious injury by dangerous driving for which the maximum sentence is 5 years' imprisonment, but of course the maximum UK sentence for inflicting grievous bodily harm is also 5 years' imprisonment (and not 7 years as in the Cayman Islands). That difference between the maximum Cayman and UK sentences for the equivalent offences must be taken into account. There is as yet no UK Sentencing Guideline for the offence of causing serious injury by dangerous driving. The UK Court of Appeal has said that Courts may have regard, in cases of serious injury caused by dangerous driving, to the Sentencing Guideline for causing death by dangerous driving as long as the fact that no fatalities have occurred is taken into account¹.



¹ (See *Regina v. Dewdney* [infra at H10-H11] and *Regina v. Jenkins* [infra at para 11]).

12. I have been referred to the UK Sentencing Guideline dealing with Inflicting Grievous Bodily Harm. I have not derived a great deal of benefit from that Guideline (because the factors determining culpability in particular do not sit comfortably with the reckless infliction of harm by driving) but I find that the present case would sit within Level 2 of that Guideline on the basis that it is a case of greater harm, based on the injuries suffered, and lower culpability based on the lack of premeditation. In fact, taking into account the higher maximum sentence here in the Cayman Islands, the starting point and range of sentence applicable to a Level 2 offence do not differ greatly from those I intend to apply in the present case after analysis of the relevant case law dealing with causing serious injury by dangerous driving and of the UK Sentencing Guideline dealing with causing death by dangerous driving. Whilst the latter gives some guidance as to the sentencing principles involved, I must keep in mind, first, that the maximum sentence for that offence in the UK is 14 years, whereas here in Cayman it is only 10 years, and, second, that in the present case, no fatalities occurred, and, third, that the maximum sentence for inflicting grievous bodily harm is higher here than in the UK.



13. I have been referred to and pay heed to the decisions of the UK Court of Appeal in the following cases dealing with serious injury caused by dangerous driving:

- i. *Regina v. Stranney* [2008] 1 Cr. App. R. (S) 104; (guilty plea to inflicting GBH on 2 passengers after driving dangerously and at high speed whilst under the influence of alcohol: Sentence reduced from 3½ years to 2½ years' imprisonment);



- ii. *Regina v. Styler* [2012] EWCA Crim 2169; (guilty plea to inflicting GBH on 2 pedestrians after driving at excessive speed whilst under the influence of alcohol. Failed to stop and tried to avoid conviction by using stratagems remarkably similar to the present case: Sentence reduced from 4 years to 3 years' imprisonment but with a consecutive 18 months for perverting the course of justice);
- iii. *Regina v. Dewdney* [2015] 1 Cr. App. R. (S) 5; (guilty plea to dangerous driving and excess alcohol. 3 passengers injured (two seriously). Drove dangerously and at speed after consuming drink and drugs. Bad driving record: 4½ years' imprisonment upheld);
- iv. *Regina v. Jenkins* [2015] 1 Cr. App. R. (S) 70; (guilty plea to 2 counts of causing serious injury by dangerous driving. Dangerous overtaking at speed causing head-on collision (2 victims): 6 years imprisonment (3 years + 3 years consecutive) reduced to 3 years 7 months concurrent incorporating a 20% discount for the guilty plea);
- v. *Regina v. Hussain* [2015] Cr. App. R. (S) 52; (door-of-court guilty plea to causing serious injury by dangerous driving. Jumped red light at speed (one victim). Bad driving record: 2 years imprisonment upheld);
- vi. *Regina v. Smart* [2015] EWCA Crim 1756; (guilty plea to causing serious injury by dangerous driving. Overtaking and hit oncoming motorcycle. Momentary but significant error of judgment (categorized as Level 3). No alcohol was involved. 71 years old. No convictions: 2 years reduced to 16 months imprisonment. I note that the needs of the Appellant's wife did not justify suspending the sentence).



14. It should be noted that the sentences upheld or imposed by the Court of Appeal in those cases were substantially reduced on account of the guilty pleas and therefore represent between 66% to 80% of the sentence to be imposed following a trial.
15. I have also been referred to authorities from this jurisdiction:
- i. *The Chief Justice's Statement on Tariffs and Guidelines (2002)* in which the tariff for causing death by dangerous driving involving alcohol or other aggravating factors is set at 5 years;
 - ii. *Regina v. Morgan* [2011] 2 CILR Note 8; (Causing death by dangerous driving. On reading the transcript, this case simply follows the former UK guideline case of *Cooksley* which is now superseded by the UK Sentencing Guideline).
16. I take into account the UK Sentencing Guideline on Totality. Sentences must be concurrent in their operation but may be increased to reflect the degree of harm caused to more than one person².
17. I adopt the general approach of the UK Sentencing Council (as suggested in *Regina v. Hussain* [supra at paragraph 12]) in the present case by assessing the level of seriousness of the offence and the degree of harm.

² (see *Regina v. Jenkins* supra at paragraph 13)



18. When assessing the correct level of seriousness of the case overall, I have regard to the determining factors set out in the Guideline for causing death by dangerous driving. The case does not fall into Level 1 which is reserved for blatantly bad driving. This is clearly a Level 2 offence - characterised by impairment of the ability to drive due to alcohol consumption which caused a substantial risk of danger. The risk of danger is 'substantial' rather than 'significant' due to alcohol which impaired the ability to drive safely. I reject the idea that this case falls wholly into Level 3 and the fact that you drove in a manner inappropriate for the prevailing conditions is subsumed within Level 2. For a UK Level 2 offence of causing the death of one victim by dangerous driving, the starting point would have been 5 years custody with a range of sentence between 4 and 7 years. I pay heed to those guidelines subject to the caveats to which I referred earlier and I reduce the sentence levels accordingly.

19. I assess the Level 2 starting point for sentence for Counts 1 and 2 at 2 years' imprisonment with a sentencing range of between 18 months and 3½ years' imprisonment. This is because I am unable to equate the standard of your driving with that apparent in the cases of *Stranney*, *Styler*, and *Dewdney* where, although alcohol had been consumed, the driving itself was far more culpable and thus resulted in higher sentence levels after taking aggravating and mitigating factors into account but before giving credit for guilty pleas. In fact, in those cases, the pre-credit sentences ranged from 3¾ years to 4½ years.



20. There are nevertheless aggravating features in this case. I am careful not to double-count excess alcohol consumption as that is the principal reason for assessing these as Level 2 offences. There are however other aggravating features – namely the fact that serious injuries were caused to more than one victim, your irresponsible failure to remain at the scene and your desperate attempts to avoid the breathalyser. Post-accident behaviour is relevant to culpability because it arose directly out of your realization that you had driven recklessly whilst under the influence of alcohol. Contrary to the defence submissions, I see no distinction between someone who drives off after an accident and someone who makes off on foot, save that the former may be trying to escape liability completely. Your motivation was to prevent this Court from knowing the level of alcohol in your blood at the time of the accident. You were also on bail for driving offences at the time of these offences. I ignore the offences themselves as no finding has yet been made as the case is part heard but the fact that you were on bail is an aggravating feature of this case.

21. It has been submitted that the acquittal on the charge of dangerous driving is a mitigating factor. I do not agree. The jury was directed to acquit on that count if they decided that the driving was reckless because the offences were alternatives. Their verdict does not mean that your driving was not also in fact dangerous.



22. Save for your previous exemplary character, lack of convictions and excellent references, there is no substantial mitigation. I accept that you did not intend the consequences of your actions. I accept but can give little weight to the effect that a custodial sentence may have on your wife's health and general well-being. I also accept that this conviction and sentence will have other repercussions affecting your career and your future here in the Cayman Islands.
23. The Probation Officer says that you have expressed remorse and demonstrated victim empathy, but, your conduct in the immediate aftermath of the accident, in the course of the trial and in your account of the accident to the Probation Officer suggest otherwise. I specifically reject, in the complete absence of direct medical evidence, any suggestion that you yourself suffered brain damage or concussion in the accident. The medical reports do not support the suggestion that you sustained concussion or any other brain injury and I am not surprised that the reports were not deployed during your trial. The medical reports merely show that doctors were taking precautionary measures based on what you told them. There was no support for your complaints which I regard as part of your strategy to evade responsibility for your actions.
24. A prison sentence is inevitable. I have considered whether there are grounds for suspending any sentence. There are none even if suspension were a possibility.



25. Taking the starting point as 2 years imprisonment, I increase the sentence, based on the aggravating factors I have found to be present, to a sentence of 3 years' imprisonment concurrent on Counts 1 and 2 and impose 18 months concurrent on Count 4. That is 3 years in total. You will be disqualified from driving for 5 years.
26. I wish to pay tribute to the witnesses who went to the aid of the victims, in particular Kelly Travis Peters and Kathryn May whose sensible and prompt rendering of first aid in horrific circumstances I am sure helped enormously in safeguarding the victims and keeping them immobile until the arrival of the emergency services.

Dated this the 7th day of July 2016



**Honourable Mr. Justice Malcolm Swift Q.C. (Actg.)
Acting Judge of the Grand Court**

