1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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4 INDICTMENT NO: 0078/2015
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8 SIMON CHRISTOPHER COURTNEY
9
10 V.
11
12 THE QUEEN
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15 **Appearances:** Mr. Trevor Burke Q.C. with Mr. Laurence
16 Aiolfi of Samson & McGrath for the Applicant
17
18 Ms. Tricia Hutchinson with Mr. Greg Walcolm
19 for the Crown/Respondent

20 **Before:** Hon. Justice Malcolm Swift Q.C. (Actg.)

21 **Trial by Jury commenced:** 8th June 2016

22 **Submissions for Application heard:** 8th June 2016

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24 **RULING**

25 **ADMISSIBILITY – ALCOHOL CONSUMPTION**
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1. The Defendant faces 4 charges. Two counts of inflicting grievous bodily harm and 2 further counts of dangerous driving and reckless driving. All charges arise out of his driving of a Ford Mustang Shelby when the car left the road and hit 2 pedestrians walking along the footpath beside West Bay Road near to the entrance to the Villas of the Galleon complex. The Crown's case is that his driving was reckless because his judgment was affected by the amount of champagne he had consumed, causing him to accelerate harder than was safe in wet road conditions and so to lose control of his car and crash. In driving in that way the Crown says he recklessly took the risk of causing really serious injury to any other road users in the vicinity at the time. They also say that alternatively the driving is properly categorized as dangerous.

2. The Defence submits that I should exclude the evidence as irrelevant and that, in any event, the prejudicial effect of the evidence that the Defendant had been drinking outweighs its probative value. They submit that the evidence in relation to alcohol consumption is insufficient to show that it would adversely affect a driver.

3. The law is as follows:-

   i. In relation to dangerous driving, in ***R v. McBride (James)*** [1961] 45 Cr App R 262, Ashworth J, delivering the judgment of the Court of Criminal Appeal, held at pages 266 to 267:-

"In the opinion of this court, if a driver is adversely affected by drink, this fact is a circumstance relevant to the issue whether he was driving dangerously. Evidence to this effect is of probative value and is admissible in law. In the application of this principle two further points should be noticed. In the first place, the mere fact that the driver had had drink is not of itself relevant: in order to render evidence as to the drink taken by the driver admissible, such evidence must tend to show that the amount of drink taken was such as would adversely affect a driver or, alternatively, that the driver was in fact adversely affected. Secondly, there remains in the court an overriding discretion to exclude such evidence if, in the opinion of the court, its prejudicial effect outweighs its probative value. It is impossible to lay down any general rule as to the way in which this discretion should be exercised as each case must be considered in the light of its own particular facts, but in the opinion of this court, if such evidence is to be introduced, it should at least appear of substantial weight."

ii. That decision was considered and explained in ***R v. Thorpe*** [1972] 56 Cr App R 293 and both cases were applied in ***R v. Woodward (Terence)*** [1995] 2 Cr App R 388.

iii. In the latter case of ***Woodward*** the Lord Chief Justice giving the judgment of the Court, pointed out that the evidence at trial had not matched the anticipated written evidence so that there was no evidence of the quantity of alcohol consumed by the Appellant - only that he had been drinking. The trial Judge had correctly admitted the evidence but then, when the evidence did not 'come up to proof', should have directed the jury not to take the evidence into account. The evidence was admissible in the first place because the witness statement suggested that the Appellant had consumed a substantial amount of alcohol (5 or 6 pints of lager) which, on the earlier authorities, was a circumstance relevant to the question of whether the driving was dangerous because it was of such a quantity as would affect the driver adversely.

1 iv. Although the Lord Chief Justice outlines in that case how alcohol consumption
2 may be relevant in cases of reckless driving, the law has moved on since 1995.
3 The law is now set out in the well-known case of ***R. v. G*** [2004] 1 A.C. 1034
4 where it was held that a person acts recklessly with respect to (i) a circumstance
5 when he is aware of a risk that it exists or will exist, and with respect to (ii) a result
6 when he is aware of a risk that it will occur, and it is, in the circumstances known
7 to him, unreasonable to take the risk.
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9 v. Where alcohol consumption is a feature of the case, the decision in ***DPP v.***
10 ***Majewski*** [1977] A.C. 443, HL, to the effect that failure to foresee a risk provides
11 no defence where the failure results from self-induced intoxication is still good law
12 (although 'foresee' should be replaced by 'be aware of'). The basis of criminal
13 liability in such cases was explained by Lord Elwyn-Jones L.C.:
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15 *"If a man of his own volition takes a substance which causes him to cast*
16 *off the restraints of reason and conscience, no wrong is done to him by*
17 *holding him answerable criminally for any injury he may do while in that*
18 *condition. His course of conduct in reducing himself by drugs and drink to*
19 *that condition in my view supplies the evidence of mens rea, of guilty mind*
20 *certainly sufficient for crimes of basic intent. It is a reckless course of*
21 *conduct and recklessness is enough to constitute the necessary mens rea*
22 *[in such cases] (at pp. 474–475)."*

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25 vi. The application of the ***Majewski*** principle will be affected, however, by ***R. v. G.*** in
26 that the question for the court in such a case is no longer whether the risk would
27 have been obvious to a sober and reasonable man in the position of the Defendant
28 (per Lord Diplock in ***Caldwell***) but whether the Defendant would have been aware
29 of the risk had he been sober.
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1 4. For present purposes however it seems clear that the same principle applies to
2 dangerous driving as applies to reckless driving in that there must be evidence of
3 consumption of a sufficient quantity of alcohol as would have adversely affected the
4 Defendant's driving before the evidence is admissible. Once there is evidence before
5 the jury of such consumption, in the case of dangerous driving, it is relevant to the
6 manner in which the Defendant drove. In the case of reckless driving, it is relevant to
7 the question whether he is aware of a risk that a particular result will occur (or would
8 have been aware of the risk if he had been sober), and it is, in the circumstances known
9 to him, unreasonable to take the risk.
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11 5. The Crown submits that the evidence is sufficient to satisfy the requirements of the
12 above authorities.
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14 6. The evidence relied upon by the Crown is as follows:-
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16 i. Statements of Maricor Pintal P26-33;
17 ii. Statements of Lilambar Nepal P34-38;
18 iii. The CCTV footage contained in OH/2 **West Bay Accident**;
19 iv. The Summary of the CCTV footage P146-149;
20 v. Transcript of the Defendant's interview at P172;
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22 7. The Crown asserts (*inter alia*) that the above evidence shows that:-
23 i. The defendant was served with a 4oz glass of champagne just before 12 noon;
24 ii. A bottle of champagne contains up to 6 glasses of champagne;

iii. The waiter assigned to the Courtney table served "about 4 glasses" of champagne to the defendant. It is at present unclear whether the glass served before 12 noon was included in that total;

iv. Champagne was being served at the restaurant between the defendant receiving his first glass at 1143 whilst waiting for a table and the closure of the service at either 1500 or 1550;

v. The defendant admitted in interview to consuming one glass of champagne per hour but said he could not recall the last "two to three hours";

8. If the Crown's evidence 'comes up to proof', then there is evidence that the Defendant consumed in the period of 5 hours prior to the accident the rough equivalent of one bottle of champagne or almost that amount.

9. If any reasonable person asks themselves whether they would be likely to pass a breath test after consuming 4 or 5 glasses of champagne over the previous 5 hours or whether, after consuming such an amount they should get behind the wheel of any car let alone a Ford Mustang Shelby on a wet road, the answer must surely be "no". A jury would be likely to find that the amount the Defendant had to drink was substantial in all the circumstances.

1 10. In any event my view is enforced by the decision in ***R. v. Mari (Gino)*** [2010] R.T.R.
2 17, CA where it was held that evidence of the consumption of alcohol prior to driving
3 is admissible provided that there is evidence of the amount consumed or of the
4 Defendant having been adversely affected by it and the fact that the Defendant would
5 have been under the legal limit was irrelevant as it was common knowledge that
6 alcohol may affect people's reactions.
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8 11. Accordingly the evidence of alcohol consumption is relevant and probative to the
9 issues as already explained and I have been given no adequate basis for any finding
10 that the prejudicial effect of the evidence outweighs its probative value. There is
11 bound to be some prejudice but it is not so great as to affect admissibility.
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15 **Dated this the 8th day of June 2016**

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