

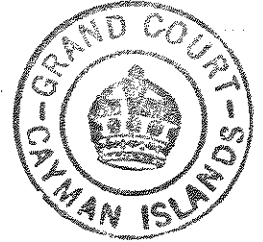
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0091/2015**

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6
7 **THE QUEEN**

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9 **V**

10
11 **JEFFERSON JEUPE LAUREANO**



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14 **Appearances:**

Ms. Nicole Petit for the Crown

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

18
19 **Before:**

Hon. Mr. Justice Malcolm Swift (Actg.)

20 **Submissions heard:**

27th April 2016

21
22 **SENTENCE RULING**
23

- 24 1. The Defendant has pleaded guilty to Count 2 – causing the death of Raoul
25 Muhammed Scott by careless driving on the 9th January 2015 contrary to s.79(1) of
26 the Traffic Law (2011 Revision). His plea of not guilty to the more serious offence
27 in Count 1 has been accepted and the charge has been left on the file.
- 28 2. At 11:23 p.m. on Dennis Foster Road, Cayman Brac, the Defendant drove his white
29 Honda Civic into the rear of a red Honda Civic being driven by the Deceased in the
30 same direction along the road. Both drivers lost control of their vehicles and
31 crashed. Mr Scott was wearing a seat-belt but died.

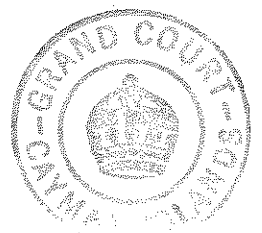
1 3. It is suggested that visibility was poor at the time of the accident but no one
2 suggests that this played any part in what occurred. The Defendant left the scene of
3 the accident because he and his passenger Fernando Frances were taken to hospital.

4 4. Blood tests provided negative results for the presence of alcohol in respect of both
5 drivers.

6 5. The Defendant was arrested on the 11th January 2015 at 5:23 p.m. When
7 interviewed, after taking legal advice, he replied no comment to the questions he
8 was asked, but later answered some pertinent ones.

9 6. The Defendant was interviewed again on the 11th September 2015 when he agreed
10 to answer questions without the presence of a lawyer. He said that he was leading a
11 group of Honda vehicles driven by his friends when the victim's Honda came from
12 behind, overtook the line of cars at great speed and disappeared along the road
13 ahead. As it sped past, the Defendant said it threw up pebbles which hit the side of
14 his car. He was convinced that the victim was, by his driving, issuing a challenge
15 to race. He was throwing down the gauntlet. Nevertheless the Defendant was
16 determined not to race (although he and his friends had been burning rubber earlier)
17 and did not accept the challenge. He did however increase his speed to between 50
18 and 60 mph – on a 40 mph-limit roadway – and maintained that speed. As the
19 Defendant saw the victim's car ahead, which was by that time moving much more
20 slowly, he decided to overtake. He denies speeding up in order to catch the victim
21 or to race him. He said:

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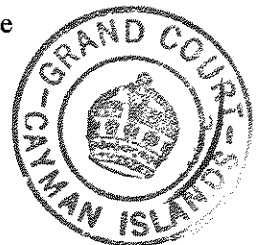


1 *"I never chase him down to speed him – to catch him. Cause I can tell you this*
2 *right now if I wanted to overtake him from long time I could take him because*
3 *... I can say my car – my car is basically one of the high performance v-tech*
4 *single up here in Cayman Brac".*

5 So the Defendant was saying that he was not humiliated by being overtaken by an
6 inferior vehicle and was not provoked into any exhibition of retaliatory driving.

7 7. As the Defendant indicated his intention to pull out from behind the victim and
8 moved across to the offside of the road to overtake, he was travelling at up to 60
9 mph in 3rd gear. The front-seat passenger assessed the speed at about 55 mph. The
10 accident reconstruction expert puts the subsequent collision speed at impact at
11 72.69 mph. As he began to overtake, the Defendant claims that the victim pulled
12 over to the right giving him no opportunity to avoid colliding with the rear of the
13 victim's car.

14 8. In his account to the Probation Officer, the Defendant repeated his account of being
15 overtaken by the Deceased at high speed. He said that the Deceased then slowed
16 down to about 20 mph, causing him (the Defendant) to pull in behind the victim in
17 preparation for a safe overtaking manoeuvre. Although there was a suggestion to
18 the Probation Officer that the accident was caused by the victim braking as the
19 overtaking was commencing, that was not the case being put forward in interview.
20 On the contrary, in interview the Defendant said that the victim's car increased its
21 speed and moved across into his path as he overtook. Examination of the lights of
22 the victim's car confirmed that the brake lights had not been lit immediately before
23 the collision and there is no evidence to support that belated suggestion.



1 9. The Defendant clearly stated in interview that in his opinion the victim was wanting
2 to race him, but he maintained that he did not rise to the challenge.

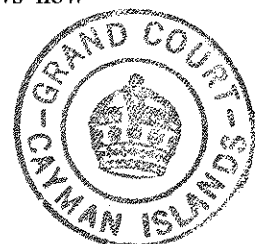
3 10. The collision occurred, according to the road traffic collision expert, because the
4 Defendant was driving too close to the other vehicle at a speed of over 70 mph in a
5 40 mph limit when he began to overtake.

6 11. The Defendant is 22. His record is of little significance except for the fact that in
7 2012 he was convicted of careless driving with associated motoring offences –
8 leaving the scene of an accident, using a vehicle with an expired licence and no
9 roadworthiness certificate. He was escaping the Police when this incident occurred.

10 12. The Defendant pleaded guilty to Count 2 on this Indictment on the 29th January
11 2016 at the first Grand Court mention listing. He has expressed remorse and I
12 accept that it is genuine. He is entitled to a reduction of one-third in any sentence
13 to reflect his early acceptance of guilt.

14 13. I have read the Victim Impact Statement which makes clear what a tragedy this has
15 been for the Scott family - a sound, close-knit Christian family, devastated by the
16 loss of the Deceased. Their lives will never be the same again.

17 14. I have also read the Social Inquiry Report (SIR). I have listened carefully to a
18 measured mitigation and take into account, as far as I am able, the points so ably
19 made. I have read the statement made by the Defendant's sister that is, frankly,
20 heart-breaking. I have also read the statement of his parents, which shows how
21 devastated the family has been by this tragedy.



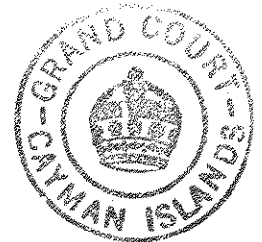
1 15. The maximum sentence for this offence is 7 years' imprisonment. The maximum
2 sentence in the UK is 5 years. Reliance on any UK guidelines or guideline cases
3 must reflect that difference, but only in general terms. I do not accept that the rote
4 approach of applying a percentage-uplift is appropriate.

5 16. I have considered *The Chief Justice's Statement on Tariffs and Guidelines for*
6 *Sentencing of Certain Offences* dated 16th January 2002 (the Chief Justice's
7 Sentencing Guidelines). It has not been updated for some time¹. The sentencing
8 levels were fixed in 1998 but, although they do not take into account subsequent
9 sentencing guidelines and guideline cases here and in the UK, they reflect in
10 general terms, the sort of approach the Courts should take in cases of causing death
11 by driving.

12 17. There are three (3) categories encompassed within the general definition of causing
13 death by careless driving:

- 14 i. Cases falling not far short of dangerous driving;
- 15 ii. Other cases of careless or inconsiderate driving; and
- 16 iii. Cases involving momentary inattention with no aggravating factors.

17 In following the sentencing guidelines, I have to assess into which of those 3
18 categories this offence falls.



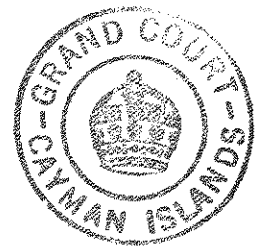
¹ Work has begun to update the 2002 Sentencing Guidelines and The Cayman Islands Sentencing Guidelines dated October 2015 have been published, however, only the offences of Robbery and Burglary have so far been addressed as work is ongoing.

1 18. This is a difficult category of offending in which to assess the correct sentence. A
2 person has died and yet, if there had been no death, the sentence for careless driving
3 would have been non-custodial. The results of the offending drive the level of
4 sentence.

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6 19. I must put out of my mind any suspicion that this was a blatant case of car-racing.
7 If it had been, the charge in Count 1 would have been the appropriate charge to
8 pursue against the Defendant and the Crown would not have accepted a guilty plea
9 to Count 2. I cannot say that the case is close to or not far short of dangerous
10 driving but nor can I say that this was momentary inattention with no aggravating
11 factors. Accordingly, this is an intermediate case of careless driving based upon
12 overtaking when it was unsafe to do so due to the proximity of the car being
13 overtaken.

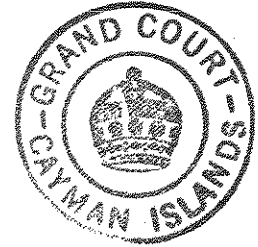
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15 20. The starting point is (based on UK guidance) initially, therefore, 36 weeks' custody,
16 with a range of sentence between a high level Community Order up to 2 years'
17 custody. A question arises whether that starting point must be adjusted to reflect
18 the higher maximum sentence in the Cayman Islands, but I do not find it necessary
19 to determine that question. I have indicated my view that a rote application of a
20 percentage-uplift is not appropriate. These guidelines are not a sentencing
21 straitjacket. The facts of the instant case must be carefully assessed. Overtaking at
22 an excessive speed - which approaches almost twice the legal limit - forces this
23 case to the upper end of the intermediate range.

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1 21. The aggravating factors which are to be considered in deciding the sentencing
2 starting point are, in so far as are relevant in this case:

- 3 i. Previous convictions including careless driving;
4 ii. Injuries to the Defendant's passenger (though not life-threatening)



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6 22. The mitigating factors to be considered are:

- 7 i. Remorse – which I accept as genuine;
8 ii. Guilty Plea (which is taken into account at a later stage in the sentencing
9 process and so must not be double-counted);

10 iii. Did the actions of the Deceased contribute significantly to the accident? On the
11 Defendant's account the driving of the Deceased did contribute to a minor
12 extent but, in my judgment, the contribution was not significant. The true cause
13 of the collision was driving too close to the car in front before starting to
14 overtake at an excessive speed. There is no evidence to counter the allegation
15 that the Deceased drove as the Defendant suggests and so I must accept that he
16 did. Of course a false allegation against a victim would be an aggravating
17 factor but that is not established to be the case here.

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19 23. I must be careful not to double-count the factors which fix the starting point, and
20 those other factors of aggravation or mitigation which further affect the sentence.

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22 24. I take into account also all the mitigating factors previously mentioned. The SIR
23 makes plain the impact a custodial sentence will have on the Defendant's family
24 and I take that into account together with the other positive matters said about the
25 Defendant in that Report. I also take into account the character references supplied.

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25. It therefore seems to me that the additional substantial aggravating factors of a prior, relevant driving conviction, injuries to another person (although not life-changing) in addition to the Deceased, easily outweigh the mitigating factors.

26. I also take account of the authorities cited to me, but all cases differ in their factual bases and I should not be unduly influenced by them – save in giving general guidance in line with the official guidelines.

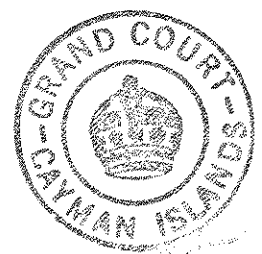
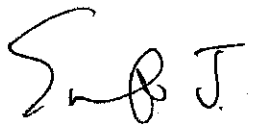
27. I fix the sentence, taking aggravating and mitigating factors into account, at 2 years' imprisonment.

28. The plea of guilty was tendered at a sufficiently early stage in the proceedings to justify a reduction of one-third. The sentence is therefore reduced to one of 16 months' imprisonment.

29. Disqualification must follow and the Defendant will be disqualified for holding or obtaining a driving licence for 3 years to start today

30. I also recommend that he should re-pass his driving test before the driver's licence is restored.

Dated this the 27th day of April 2016



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