

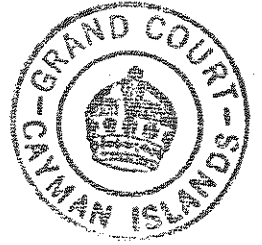
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0030/2012**

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7 **THE QUEEN**

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9 **V**

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11 **PATRICE LEANNE FREDERICK**



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14 **Appearances:**

Ms. Toyin Salako for the Crown

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16 **Mr. Ben Tonner of Samson & McGrath for**
17 **the Defendant**

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19 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

20 **Submissions heard:**

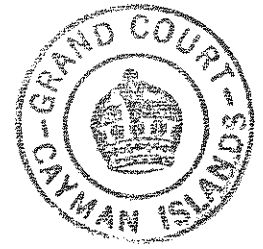
4th November 2014

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22 **SENTENCE RULING**
23

24 ***INTRODUCTION***

- 25 1. On the 8th August 2014 the Defendant pleaded guilty to Careless Driving, contrary
26 to s.69 of the Traffic Law (2003 Revision) and the particulars of the offence are the
27 Defendant, on the 6th day of January 2011, in the Cayman Islands, drove a vehicle
28 on a road carelessly, namely a Mazda Atenza motor vehicle, registration number
29 133729 on the East-West Arterial Bypass.

SUMMARY OF FACTS



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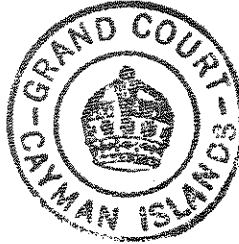
2. Crown counsel presented the following facts.
3. On the 6th January 2011, at 17:30hrs. Annette Diane Andrade and Sheena Samantha Bennett were walking eastward, against the flow of traffic on East-West Arterial, towards Newlands. The day's weather had been clear and sunny and at the time of the evening it was still light. Annette Andrade was walking on the grass and Samantha Bennett was walking in the marked pedestrian lane.
4. At approximately 18:00 hrs. Ms. Andrade and Ms. Bennett crossed the road at the bend at east-bound Lane. They resumed walking, this time, in the same direction as the flow of the traffic, that is, with their backs to the traffic, which was light. Both were walking on the cycle/unmarked pedestrian lane – with Ms. Bennett on the inside and Ms. Andrade, on the outside closest to the traffic.
5. As they walked towards Hirst Road they had their backs to the traffic. Next, Ms. Bennett suddenly heard a loud bang and when she looked beside her she could not see Ms. Andrade. Ms. Bennett then looked ahead and saw Ms. Andrade in the air and a white Mazda vehicle was on the left of the road closest to the cycle lane.
6. Ms. Andrade has no recollection of what happened after she and Ms. Bennett crossed the road, neither did she hear any warning sounds.
7. As a result of this accident it is fair to say Ms. Andrade sustained life threatening injuries.

1 8. When the police arrived at the scene they noted relatively minor damage to the
2 white Mazda vehicle. The Defendant had been driving the vehicle and was standing
3 by the road side when the police arrived. The Defendant did not have any visible
4 injuries. When the Defendant was asked how the accident occurred she replied:

5 *“Officer I don't know, I didn't see anyone, until I heard the bang. I wasn't*
6 *looking down.”*

7 The Defendant added:

8 *“Officer I don't know, I don't know in which lane my vehicle was, I don't know*
9 *in which lane the pedestrian was, as I said all I heard was the bang.”*



10 9. Police Officers conducted a roadside breath test on the Defendant which was
11 negative. On the 19th January 2011 the Defendant was interviewed and she admitted
12 being the driver of the vehicle at the time of the accident, but could not say what
13 impacted her vehicle or what caused the accident. The Court notes that the
14 paramedics and the RCIPS officers responded to the emergency promptly.

15 10. The Defendant's telephone records were obtained which showed that at 17:59 hrs.
16 she was on her mobile telephone for 2 minutes and 37 seconds. The 911 call logs
17 show that the incident was reported at 18:08hrs., medics were dispatched at
18 18:09hrs., and, first officers were on the scene at 18:18hrs.

19 11. If the first calls to the emergency services were made at 18:08hrs.then it means that,
20 based on our evidence, the Defendant was not on her mobile telephone. The
21 Defendant made a call at 17:59 hrs., which ended at 18:02:36, approximately six (6)
22 minutes before the first 911 call was made.

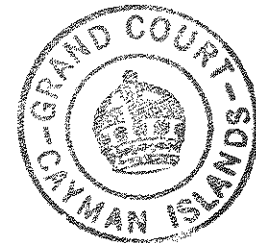
1 12. Crash analysis concluded that the vehicle made impact with Ms. Andrade at the
2 slight right-hand bend heading east towards Newlands. Ms. Andrade was first hit by
3 the bumper, then she made contact with the bonnet, then her upper torso and head
4 made contact and was penetrated by the left side of the windscreen. Thereafter Ms.
5 Andrade finally landed on the road. It was the windscreen that penetrated Ms.
6 Andrade's head.

7 13. No fault was found with the vehicle. The vehicle was test driven in similar
8 conditions and there were no problems with the brakes or steering.

9 14. The Accident Reconstruction Expert concluded: *"There were no mechanical*
10 *defects that played a part in this collision. This collision is as a result of driver*
11 *error in paying attention to the road and other users, the pedestrian who was*
12 *walking in the bike/pedestrian lane at the time of the collusion."*

13 15. Ms. Andrade suffered the following injuries:

- 14 i. A cracked skull;
 - 15 ii. A fractured clavicle and scapula
 - 16 iii. Fractured ribs;
 - 17 iv. Fractured wrist;
 - 18 v. Large laceration to the skull, forehead, and left arm;
 - 19 vi. Road rash on the entire left side of her body and right leg.
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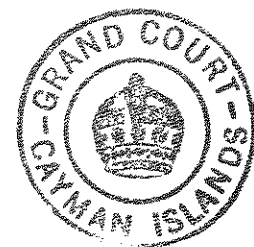


1 16. Following the Mention for Sentence (MFS) hearing in this matter, the victim
 2 provided to the Court the following documents, which I have reviewed:
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<i>Item</i>	<i>Date</i>	<i>Author</i>
1-page Medical Report/Letter	18 th April 2011	Dr. Kamal Lawrence, Chrissie Tomlinson Hospital (CTH)
1-page letter	17 th May 2010	Dr. Marc Lockhart, (CTH)
1-page letter	16 th July 2013	Sara Windsor of Cayman Physiotherapy Ltd.
1-page letter	Undated	Dr. Wayne Porter
2-page Narrative Medical Report	11 th July 2012	Alejandro Badia, Badia Hand to Shoulder Center
1-page Medical Report	27 th February 2014	Dr. John Lee
22 pages (Varying medical notes: Emergency Physician, Inpatient Physician, Therapy, Haematology, General Diagnostic, Blood bank.	6 th to the 11 th January 2011	Cayman Islands Health Services Authority
23 photographs showing the victim's injuries immediately after the accident.	---	---

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17. It is accepted by the Crown and the Defence that the only aggravating factor in this case are the serious injuries sustained by the victim as a result of the Defendant's careless driving.



DEFENCE SUBMISSIONS

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18. The offence took place on the 6th January 2011 and it was some 13 months later, on the 21st March 2012, the DPP laid an Indictment charging the Defendant with Dangerous Driving contrary to s.68 of the Traffic Law.

19. Defence counsel stated that in October 2012 the Defence informed the Crown that the Defendant was prepared to plead guilty to Careless Driving contrary to s.69 of the Traffic Law (2003 Revision). However, in November 2010 this course of action was rejected by the Crown.

20. On the 29th January 2014 the Defence renewed its application – confirming that the Defendant was prepared to plead guilty to careless driving and again the Crown stated that they were unable to accept the plea to the lesser charge.

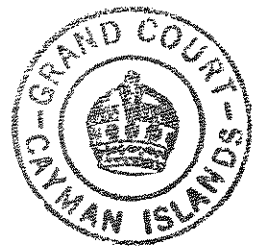
21. In or about July 2014 Crown counsel, Ms. Toyin Salako, reviewed the file and, in particular, the time of the calls from the Defendant’s phone and the 911 call, and the Crown was then able to establish that the Defendant was not driving and texting and or calling at the time her car hit Ms. Andrade.

22. Accordingly, on the 8th August 2014, the Defendant was re-arraigned on the Indictment. The Defendant pleaded not guilty to Dangerous Driving but guilty to Careless Driving and the Crown advised that this guilty plea to Careless Driving was acceptable.



1 23. It was initially assumed that the accident was caused because the Defendant was
2 using her mobile telephone at the same time her car hit Ms. Andrade and that is the
3 reason why the Defendant caused the accident. Consequently the Defendant was
4 charged with Dangerous Driving contrary to s.68 of the Traffic Law 2003 Revision.
5 However, if the RCIPS investigating officers had conducted a thorough
6 investigation of the times of the 911 calls and compared them to the times of the
7 text messages/phone calls on the Defendant's mobile phone, they would have
8 realised immediately that the Defendant was not using her phone at the time of the
9 collision. Consequently, the Defendant could have been charged with Careless
10 Driving rather than Dangerous Driving, and this case could have been disposed of
11 two years earlier. In previous cases I have highlighted the importance of the
12 investigating officers liaising closely with Crown counsel conducting the case on
13 behalf of the DPP. I understand that it was only after Crown counsel, Toyin Salako,
14 took over the conduct of this case this summer that this vital telephone evidence
15 was carefully examined. The Court appreciates that the RCIPS officers have many
16 difficult tasks. However, this delay could have been avoided if the investigating
17 officers and Crown Counsel with conduct of the case had given more careful and
18 consistent attention to the important telephone evidence in the investigation and
19 preparation of this case against the Defendant.

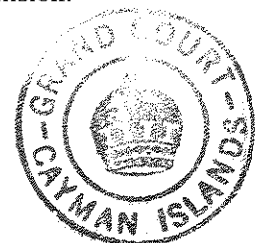
20 24. On the 8th August 2014 an Agreed Basis of Plea was handed into the Court which
21 reads as follows:



- 1 i. On the 6th January 2011, in the Cayman Islands, I drove a Mazda Atenza motor
2 car vehicle registration number 133729 on the East West Arterial Bypass. I was
3 driving in the direction of Newlands.
- 4 ii. I heard a loud noise as something impacted my vehicle. I feared that I may have
5 struck a person. I stopped the car to render assistance. My car had struck Ms.
6 Andrade;
- 7 iii. I did not notice Ms. Andrade or her exercise partner before the collision. For
8 this reason I did not alert the pedestrians to my presence by using the horn or by
9 any other means;
- 10 iv. I accept that I failed to pay sufficient attention to the roadway in front of me
11 and that this caused the collision. My mind may have been distracted by
12 something but I can only speculate about what that distraction may have been.
- 13 v. I accept that I had been using my phone at the times recorded on the telephone
14 call logs. I deny using my phone at the time of the collision.

15 25. Defence counsel states that the Defendant accepts full responsibility for the
16 accident and the injuries to the victim, Ms. Andrade, and the Defendant is totally
17 remorseful for the injuries Ms. Andrade sustained. The Defendant had no intention
18 of hurting anybody and, regrettably, was unable to offer any explanation as to why
19 she did not see the two ladies, except to admit that she must have failed to pay
20 sufficient attention to the roadway in front of her, thereby, causing the collision.

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1 26. The Defendant submits that whilst she cannot offer an explanation as to what
2 exactly happened to cause the accident, she can state that alcohol was not a factor as
3 the Defendant had not been drinking nor had she been taking any drugs. There is no
4 evidence that the Defendant was driving above the speed limit. Additionally, there
5 was no evidence of mechanical failure of the Defendant's vehicle as it was properly
6 maintained.

7 27. Defence counsel, Mr. Tonner, submits that the following mitigating factors are
8 present:

9 (i) Guilty plea;

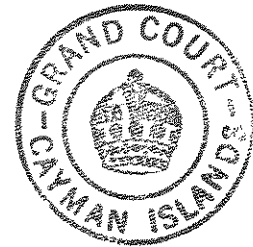
10 (ii) Genuine remorse;

11 (iii) Clean driving record;

12 (iv) Settlement of Ms. Andrade's medical expenses is being made through
13 the Defendant's insurance company;

14 (v) The Defendant has a very low risk of reoffending;

15 (vi) The Defendant is a person of very good character who has never been
16 in any kind of trouble with the law.



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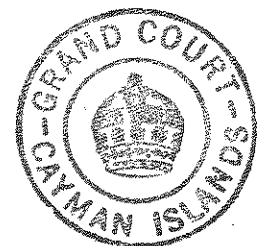
THE LAW

28. In *R v. Johnson*¹ the English Court of Appeal set out that the primary consideration in a case of Careless Driving is the degree of culpability and carelessness. The Court should have regard to the consequences of that carelessness in examining the degree of culpability but they are not the key considerations in contemplating sentence.

29. The UK Sentencing Guidelines have been adopted by our Court of Appeal and by the Grand Court. Although the penalties differ, there is a clear statement at page 118 in the UK Sentencing Guidelines dated the 4th August 2008:

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

30. I now turn to the Law in the Cayman Islands. The maximum sentence under s.69 of the Traffic Law (2003 Revision) is a fine of CI\$1,000.00 or imprisonment for six (6) months and the Court may order that the offender be disqualified from driving for a period not exceeding twelve (12) months. Section 69 is now s.77 of the Traffic Law (2011 Revision) but the maximum sentence has not been amended.



¹ [1998] 2 Cr App R (S) 453

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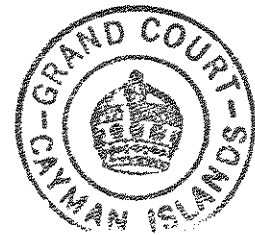
CONCLUSION

31. The Court has received a helpful Social Inquiry Report (SIR) from the Probation Officer assigned to this case who states that the Defendant *“is assessed to be at a very low risk of reoffending. She has no previous criminal convictions and appears to be genuinely remorseful for the matter which now appears before this Court.”*

32. In addition, the Probation officer confirms that the Defendant has expressed a willingness to give back by completing Community Service and the Defendant has been assessed as being suitable to do the same.

33. This incident happened shortly after sunset on the 6th January 2011. Although one cannot recreate the road conditions, in light of the fact that sunset was 6:02 p.m. and the accident occurred at approximately 6:08 p.m., the accident occurred at dusk or slightly after dusk.

34. The victim was wearing black clothes with luminous stripes at the front of her walking shirt, and luminous stripes at the hips of her walking pants. The victim’s walking partner was on the hard shoulder whilst the victim was in the cycling/ pedestrian lane.



1 35. As always, it is easy to be wise after the event. Perhaps if there had been a raised
2 footpath on the East-West Arterial Bypass, the accident could have been avoided.
3 The Court can take notice of the fact that in recent years there has been a significant
4 increase in careless and dangerous driving accidents, causing serious injuries to
5 pedestrians, runners and cyclists. It is absolutely imperative that motorists ensure
6 that cyclists, runners and, as in this case, pedestrians, can use the road in the sure
7 knowledge that they will be safe.

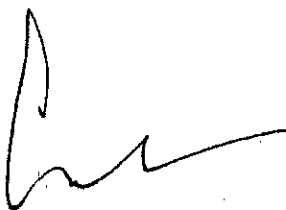
8 36. As Defence counsel has stated, this is a tragic accident. The Defendant comes
9 before the Court with an excellent driving record and no previous convictions. She
10 has admitted her guilt and is sincerely remorseful.

11 37. The Crown is not applying for a Compensation Order and I assume that the
12 Defendant and/or her insurance company are settling the victim's medical bills.
13 Accordingly, I impose the following sentence:

14 i. 240 hours of Community Service to be completed within twelve (12) months
15 from today's date and at the direction of the Probation Officer;

16 ii. The Defendant is disqualified from driving for six (6) months.

17 **Dated this the 12th day of November 2014**



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Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court

