IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0020/2013

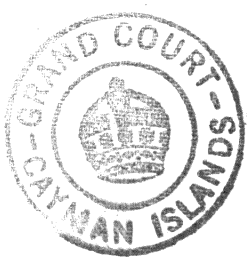
THE QUEEN

V

FITZROY MARVIN ROACHE

Appearances:	**Mr. Greg Walcolm for the Crown**
	Mr. Dennis Brady with Mr. Crister Brady for the Defendant
Before:	**Mr. Justice Alastair Malcolm (Actg.)**
Submissions heard:	**4th March 2016**

SENTENCE RULING



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1. At 6.00am on Tuesday 16th October 2012 Beverley Ramsay was driving her Hyundai H1 Bus northwards on the Esterley Tibbetts Highway. Having passed Greenwood Drive she had reached what was for her a slight left-hand bend. She was there confronted by a Nissan UD Box Truck coming south in her lane. Mrs. Ramsay had sufficient time to apply the brakes but nothing more to avoid a collision.

2. The impact was between the right fronts of both vehicles. The Hyundai Bus was right-hand drive and the damage was concentrated on the driver's side. Mrs. Ramsay suffered serious injuries and died at the scene. The Nissan Truck was left-hand drive and was being driven by the Defendant. After impact both vehicles spun in a clockwise direction and the Nissan truck ended up in the northbound carriageway on its left side at the entrance of Greenwood Drive and the Hyundai ended up some 77 feet further north, still in the northbound carriageway. The Defendant was uninjured and attempted to deal with an engine fire in the Hyundai and to assist Mrs. Ramsay who was trapped in her vehicle.

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3. Miss Christine Demsys was driving her vehicle north behind Mrs. Ramsay's Hyundai. She had to swerve off the road to avoid the Nissan Truck as it crossed her lane and overturned. She told the police that at the time the visibility was clear as the sun was up. Mr. Kevin Wright who lives at the end of Greenwood Drive heard the crash, saw smoke and went to the scene. He also told the police that it was clear at the time and the sun was up.

4. The Defendant was arrested, a blood sample was taken from him and his mobile phones were seized. Tests showed negative for alcohol and that he had not been using a phone at the time of the accident.

5. The crash scene and the vehicles were examined. Esterley Tibbetts Highway at that ~~who~~ point is 23 ft. 4 ins. wide and the impact took place 5 ft. 6 ins. *in* from the centre line in the northbound carriageway. Hot Shock tests on the bulbs indicated that at the time of impact the low beam headlights of the Hyundai were on but the high beam lights were not. The Hyundai brake lights were illuminated at the time of impact. The Nissan brake lights were not illuminated at that point. There were no marks on the road to indicate any evasive manoeuvre by the Nissan as it entered the northbound carriageway and collided with the Hyundai.

6. The prosecution experts' opinions were that the Nissan truck had crossed the centre line and entered the opposite carriageway without any attempt by the driver to correct its direction. Based on the evidence of the Defendant's co-worker that they had been working until 1:30 a.m. that morning, and that the Defendant had spent the rest of the night in his vehicle, the experts suggested that an explanation for the van entering the wrong carriageway without the driver attempting to rectify the course of the Nissan was that he had dozed off. There is no evidence that the Defendant did doze off. All that can be said is, for whatever reason, the Defendant failed to pay sufficient attention to the fact that his vehicle was leaving the correct carriageway and going to collide with an on-coming vehicle.

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7. The Defendant pleaded guilty on 11th September 2015 to Count 1, an offence of Causing Death by Careless Driving contrary to s.79 of the Traffic Law 2011. The case was adjourned for a sentencing hearing and a Social Inquiry Report (SIR) and Victim Impact Statements were requested.

8. On the hearing on 4th March 2016 the Defendant pleaded guilty to Count 2, an offence of Driving Without Being Qualified contrary to s.23(1) of the Traffic Law 2011. This offence arose because the Defendant only held a Group 2 licence which does not cover vehicles of the weight and size of the Nissan Truck.

VICTIM IMPACT STATEMENTS

9. Mrs. Ramsay had been married for 30 years to her husband Dudley and was a mother to 6 and grandmother to 7. She is described in the victim impact report as "the glue" that held the family together and her death has left a huge void in the family. She was loved and respected by everyone who knew her. She had been a taxi driver for over 25 years and had held a clean driving licence all her driving career.

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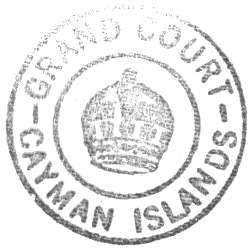
SOCIAL INQUIRY REPORT

10. The Defendant was born in 1982 and brought up on his parents' farm in Jamaica. He obtained a work permit and moved to the Cayman Islands in 2005 to work in the construction industry. He has no previous criminal convictions but has been fined for speeding.

11. The Defendant's pastor, Mr. Jefferson, has told the writer of the report, Simone Savage, that the Defendant seems distraught and expressed deep remorse in regards to someone losing their life. The Defendant told Ms. Savage that he regrets the incident deeply and hurts to know that he was involved in an accident in which someone lost their life.



SENTENCING GUIDELINES AND AUTHORITIES

12. I have been provided with the UK Sentencing Guidelines Council's Definitive Guideline for Causing Death By Driving. In considering those guidelines I bear in mind that the maximum sentence in England and Wales for Causing Death by Careless or Inconsiderate driving is 5 years while in the Cayman Islands it is 7 years.

13. There are 3 categories of offence:

i. Careless or Inconsiderate driving falling not far short of dangerous driving;

ii. Other cases of careless or Inconsiderate driving; and

iii. Careless or Inconsiderate driving arising from momentary inattention with no aggravating factors.

14. I dismiss the third category as in my view this was more than momentary inattention by the Defendant and in any event driving other than in accordance with the terms of a valid licence is classified as an aggravating factor.

15. The issue therefore is whether I am satisfied that the Defendant's driving fell not far short of dangerous driving or not.

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16. I have been referred to a number of authorities. In ***R v Gelezauskas***[1] the appellant, a Lithuanian, had driven a maximum of 650 metres on the wrong side of the road. In the Court of Appeal Nicol J said[2]

> *"The very most it would have been some 600 metres. We consider it must have been a good deal less than that or others in the car would have said something, particularly, perhaps, the person in the front passenger seat".*

Despite reaching that view the Court said the sentencing judge had been wrong to place the driving in the middle category and the appellant's driving should have been categorized as Careless or Inconsiderate driving falling not far short of dangerous driving.

17. In ***R v Crew***[3] the appellant had lived in the United States for 7 years and the explanation for the accident is set out in Griffith William J's judgment. He said[4]

> *"the applicant was tired by reason of his long flight and momentarily fell asleep; when his car veered to its nearside, he woke up and, we would add, in all probability, because he was used to driving on the right hand side of the road in the United States of America, he instinctively over-corrected the car's direction of travel, driving onto his offside and into collision with Miss Jackson's car".*

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[1] [2014] EWCA Crim 1539
[2] At paragraph 16 of the Judgment
[3] [2009] EWCA Crim 2851
[4] At paragraph 4 of the Judgment

Both at the sentencing hearing and in the Court of Appeal it was accepted that the driving fell into the most serious category – although it should be noted that the criticism of the Court of Appeal was directed at the applicant driving knowing he had had little sleep rather than swerving into the wrong carriageway per se.

18. In a number of the authorities to which I have been referred the courts have underlined the fact that the offence of causing death by careless driving produces one of the most difficult sentencing problems. On the one hand a life has been lost and on the other the offender has done no more than drive in a manner which, if no one was killed, would result in a relatively small financial penalty. It is pure chance, or, as Mr. Brady put it in mitigation, fate, whether a piece of careless driving results in no accident, an accident, with no injury, an accident with minor injury, an accident with serious injury, an accident with life threatening injury where the victim is saved by the skill of a surgeon, or an accident where someone is killed.

DEFENCE CASE

19. Mr. Roache's case is that he did not doze off and had had adequate sleep between 1:30 a.m. and 5:30 a.m. – even though he was sleeping in the Nissan truck. When questioned at the scene Mr. Roache said he saw lights and tried to steer to the left. To Ms. Savage, the author of the SIR, he said that at the time of the accident he was travelling at 35mph and was fully aware. He said when approaching the bend he saw headlights from another vehicle approaching. He believed he was in the correct lane however the lights kept coming closer and he realised that both his vehicle and the approaching vehicle were in the same lane. He said he tried to swing away from the vehicle, it was too late and both vehicles collided.

20. In mitigation Mr. Brady repeated that Mr. Roache was awake and alert and stated that he was blinded by the lights of the oncoming vehicle. He further contends that Mr. Roache swung to avoid the Hyundai. As support for that contention he relies on the fact that the part of Nissan which impacted with the Hyundai was not the front or cab but the wider box part. Mr. Brady also asserted on the basis of a report he had received that the Hyundai was exceeding the 40 mph speed limit. Finally Mr. Brady echoed what Mr. Roache had said to his pastor and Ms. Savage by expressing Mr. Roache's utmost apology, regret, and remorse that he was instrumental in causing the loss of Beverley Ramsay's life.

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BASIS FOR SENTENCE

21. Having read the statements of the prosecution experts and the response by them to the defence expert's assertion of speeding, I am satisfied that Beverley Ramsay was not speeding. In any event speed played no part in this tragic accident. For that reason Mr. Roache's previous speeding offence is of no relevance.

22. I am satisfied that Mrs. Ramsay was driving correctly in the northbound lane of the Esterley Tibbetts Highway in the nearside half of her carriageway. The Hyundai had dipped headlights illuminated. At the time of the collision Mrs. Ramsay had applied her brakes.

23. I am satisfied that Nissan left the southbound lane and entered the northbound lane where it collided with the Hyundai. No attempt was made to correct the direction of travel, nor were the brakes applied before the collision.

24. The Hyundai was on dipped headlights and the sun was up according to the two independent witnesses. The Nissan was driving south and therefore Mr. Roache could not have been blinded by either the sun – if it had risen that far – or, in my judgment, by the dipped lights of the Hyundai. The lights on the Hyundai would have given clear warning to an alert driver that there was a vehicle approaching in the opposite lane.

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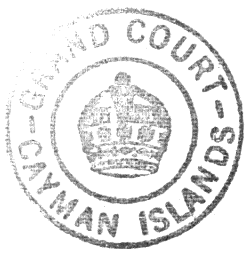
25. The most likely explanation for Mr. Roache's driving is that suggested by the Crown, namely that he dozed off. If that were the case an explanation for the bright lights would be if he awoke just before the collision and was faced by lights a short distance in front of him.

26. If he were wide awake and alert, what was it that distracted Mr. Roache to the extent that he did not alter course or brake before the collision? It has been proved he was not using a cell phone which might have explained it. Whatever it was, it was such to distract him for a significant length of time. The bright lights cannot provide a reason as any driver would steer away from them and or brake.

27. In my judgment, on the basis of either dozing off, as the Crown, asserts or being awake and being significantly distracted, this is a case which falls just short of the most serious category of the guidelines. It follows that the starting point is 36 weeks custody with a range of High Community Order to 2 years.

28. There is the aggravating factor of driving other than in accordance with the terms of his licence. The combination of the seriousness of this offence in its bracket and the aggravating factor produce, in my judgment, a sentence of 15 months' imprisonment.



REDUCTION FOR GUILTY PLEA

29. The Indictment was signed and filed by the 1st May 2013. The Defendant did not enter his plea of Guilty to Count 1 until 11th September 2015. Mr. Brady has urged me to give the full one third discount available to those who plead at the First Reasonable Opportunity. To a layman it is difficult to understand how anyone can say that 2 years and 4 months after the preferment of an Indictment can be described as the First Reasonable Opportunity. I refer to the Victim Impact Statement prepared on behalf of Dudley Ramsay, Angelique Howell and Stacy Boxwell dated 28th September 2015 in which they say:

> "*This case has taken 3 years to reach the sentencing stage as the defendant until this point has denied any liability or wrong despite in our opinion overwhelming evidence to the contrary, we as a family condemn his actions and do not accept that he could not have admitted his guilt immediately instead of dragging out these proceedings to the point of abuse*"

30. Mr. Brady submits that as he did not receive the expert's report commissioned by the defence until 13th August 2015 a plea entered on the 11th September could be said to be the First Reasonable Opportunity. He further submits that in case where the Crown's case is almost entirely based on evidence of experts, it is not unreasonable for a Defendant to await an expert report of his own before entering a plea. In this case that submission has some force.

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31. However I must add this. Mr. Brady started his search for an expert in May 2013 and did not obtain the report until August 2015. It matters not whose fault it is that there was that delay; the effect on a family who have suffered a grievous loss and who are looking for closure is immense. I urge all Attorneys to bear in mind the effect of the delay and not to let similar delays occur in the future.

SENTENCE

32. On Count 1 I give credit of the full one third for the plea of guilty reducing the 15 months to 10 months. I have considered the submissions by Mr. Brady that I should suspend the sentence however this is not a case where that would be appropriate. There will be a Disqualification for a period of 3 years.

33. On Count 2 as it is an aggravating factor in Count 1 I make no separate penalty.

Dated this the 15th day of March 2016

Mr. Justice Alastair Malcolm Q.C.
Acting Judge of the Grand Court