

IN THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE  
(CRIMINAL JURISDICTION)

CASE NO: DOMHCR 2024/0005

THE STATE  
V  
JENNO JOSEPH

**Appearances:**

Ms Sherma Dalrymple, Director of Public Prosecutions and Mr Kevin Julien for the State  
Mr David Brunez and Mr Tiyani Behanzin for the Defendant

-----  
2024: September 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>  
-----

**DECISION**

1. **COLIN WILLIAMS J:** The Defendant, Mr Jenno Joseph, was indicted on the 29<sup>th</sup> of July 2024 on a single count indictment for causing death by dangerous driving. That offence is contrary to section 51 (1) of the **Vehicles and Road Traffic Act**<sup>1</sup>. Mr Joseph is accused of causing the death of Mr Philsbert Felix Williams on the 26<sup>th</sup> of December 2020, at Pottersville, in the Parish of Saint George in the Commonwealth of Dominica. At the time, Mr Joseph was said to be driving a Suzuki Swift car, registration number TO-976, on the E.O. LeBlanc Highway<sup>2</sup>. There was a collision involving the car and Mr Williams who was riding a motor cycle.
2. The issue for determination at this stage is whether Mr Joseph has a case to answer.

---

<sup>1</sup> Chapter 46:50 of the Laws of the Commonwealth of Dominica, Revised Edition 2017

<sup>2</sup> Particulars as stated in the amended indictment. The amendment changing the Parish from Saint Paul to Saint George was granted on the 23<sup>rd</sup> of September 2024, prior to the commencement of the trial

## The Act

3. According to section 51 (1) the **Vehicles and Road Traffic Act**:

“Any person who causes the death of another person by the driving of a motor vehicle on a road recklessly or at a speed or in a manner dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic that is actually on the road at the time or might reasonably be expected to be on the road at the time, is guilty of an offence....”

4. The **Act** provides that a person may be convicted for reckless or dangerous driving as an alternative to causing death by reckless or dangerous driving.
5. The headnote of section 51 of the **Act** states: “Causing death by reckless or dangerous driving.”
6. The headnote of section 52 states: “Reckless or dangerous driving.”
7. Section 52 is worded somewhat similarly to section 51, with the words “who causes the death of another person by driving” in the first line in section 51 (1) being replaced by the words: “who drives a...” in section 52 (1).
8. There are different ways one may commit an offence under this **Act**:
  - i. by driving recklessly, or
  - ii. by driving dangerously, or
  - iii. by speeding.
9. In any event, there must be “regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic that is actually on the road at the time or might reasonably be expected to be on the road at the time.”
10. There is no definition in the interpretation section of the **Act** as to what is “reckless or dangerous driving.”
11. The State did not allege that speed has anything to do with this offence. The indictment expressly excised any reference to speed in the particulars of the offence. The allegation was that the manner of the driving by Mr Joseph was dangerous having regard to all the circumstances of the case.
12. What, then were the elements of the offence that the State was required to prove?
  - i. That Philsbert Felix Williams is dead.
  - ii. Williams’s death was a consequence of a motor vehicle collision.
  - iii. The collision occurred on a public road.
  - iv. The defendant Jenno Joseph was the driver of a vehicle involved in the collision.

- v. At the time of the collision, the defendant, Jenno Joseph, drove the vehicle dangerously, having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic that is actually on the road at the time or might be reasonably be expected to be on the road at the time.

13. There was no dispute between the parties with regard to the first four elements of the offence. However the issue with regard to the manner of driving, whether it was dangerous driving, was hotly contested.

### **No Case submissions**

14. The test to be applied upon a 'no case' submission is found in **R v Galbraith**<sup>3</sup>. Lord Lane, CJ, in his judgment said<sup>4</sup>:

"(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty – the judge will stop the case.

"(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

"(a) Where the judge concludes that the prosecution's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

"(b) Where however the prosecution's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury...

"There will of course, always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge."

15. Mr David Bruney on behalf of the defendant submitted that Mr Joseph ought not be put on his defence because there was no case for him to answer, either

- i. because there was no evidence that a crime was committed; or
- ii. a jury properly directed could not properly convict on the accepted evidence.

---

<sup>3</sup> [1981] 1 WLR 1039; 73 Cr App R 124 (CA)

<sup>4</sup> At page 127

16. Counsel Bruney contended that there was no evidence to show that the defendant drove dangerously. He noted that sadly, the evidence was that it was the deceased rider of the motor cycle who “nobody saw from as far away as Ma Boyd” who may have been at fault.
17. Defence Counsel noted that the operative word of the offence was “dangerous” and said it was incumbent on the Prosecution to show how the defendant drove dangerously. Further, he said, it must be demonstrated that the manner of Mr Joseph’s driving fell far below a careful and competent driver.
18. Mr Bruney pointed to the absence of any evidence to describe the conduct on the road of the rider of the motor cycle other than the fact of the collision.
19. The Learned Director of Public Prosecutions, Ms Sherma Dalrymple, posited that the State had in fact adduced sufficient evidence to make out a *prima facie* case, and submitted that Mr Joseph had a case to answer.
20. The DPP after reviewing the test as outlined in **Galbraith**, pointed to the learning in the case of the **Director of Public Prosecutions v Selena Varlack**<sup>5</sup>. The DPP in citing the case highlighted that there were limited circumstances which permitted a judge to intervene in a matter.
21. Lord Caswell in **Varlack** said:
 

“The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury properly directed could on that evidence find the charge in question proved beyond reasonable doubt.... The underlying principle that the strength of the evidence should be left to the jury rather than being undertaken by the judge is equally applicable in cases ... concerned with the drawing of inferences<sup>6</sup>.”
22. Notably, Lord Caswell went on to say: “There is no case to answer only if the evidence is not capable in law of supporting a conviction<sup>7</sup>.”

### Legislative History

23. The legislation governing motor vehicle offences in the Commonwealth of Dominica, as is the case in many other areas of the law, tend to reproduce particular English statutes. This is the situation in other former British colonies in the region as well, where legislation has been adopted.
24. An understanding of the statutory offence of causing death by dangerous driving may be enhanced by tracing its legislative history.

---

<sup>5</sup> [2008] UKPCC 56 (PC)

<sup>6</sup> Varlack, paragraph 21

<sup>7</sup> Paragraph 22

25. The provision under which Mr Joseph is charged, [section 51 (1) of the Dominica **Act**], is worded similarly to section 1 (1) the English **Road Traffic Act of 1960**. And section 52 (1) of the Dominica **Act** reproduces section 2 (1) of the English **Act of 1960**.

26. Legislation governing motor vehicle offences in England has been redrafted on many occasions over the past century:

- There was no separate offence of dangerous driving in the **Motor Car Act 1903**. Section 1 of that act did not distinguish between driving “recklessly,” or “negligently” or “in a dangerous manner<sup>8</sup>.”
- The **Road Traffic Act 1930** repealed the **1903 Act** and provided separate offences for dangerous driving and careless driving.
- Causing death by (reckless or) dangerous driving was made an offence by section 8 of the **Road Traffic Act 1956**.
- Causing death by dangerous driving was re-enacted as section 1 of the **Road Traffic Act 1960**.
- Causing death by dangerous driving was retained as section 1 of the **Road Traffic Act 1972**.
- Causing death by dangerous driving was abolished by the section 50 (1) of the **Criminal Law Act 1977**. It was replaced at section 1 (1) with the offence of causing death by reckless driving.
- Causing death by dangerous driving was re-introduced by the **Road Traffic Act 1988** (as amended by the **Road Traffic Act 1991**). The enactment abolished the offence of causing death by reckless driving.

27. The **1988 Act** sought to define ‘dangerous driving’ at section 2A this way:

“...a person is to be regarded as driving dangerously if

- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.”

---

<sup>8</sup> See *R v Lawrence* [1981] 1 All ER 974, [1982] AC 510, [1981] 2 WLR 524 (HL)

28. According to the learned authors of **Blackstone's Criminal Practice 2017**<sup>9</sup>, the test of dangerous driving is an objective one<sup>10</sup>. The case of **Loukes**<sup>11</sup> is cited as an authority for that proposition.

29. **Blackstone's** noted:

"The standard of driving must fall 'far below' that expected of a 'competent and careful' driver and must be obvious to a 'competent and careful' driver that the manner of driving is dangerous. The prosecution must demonstrate both elements before s. 2A(1) is satisfied.... When directing a jury, the judge must avoid watering down the requirement for the driving to fall 'far below' the standard expected so that it confuses the test with that for careless driving. The introduction of the concept of a careful driver as an objective observer places the question of what constitutes dangerous driving within the province of the tribunal of fact<sup>12</sup>."

30. The Learned authors of **Blackstone's** summarise the English Crown Prosecution Service, CPS, policy for prosecuting cases of bad driving, by giving examples of driving that may support an allegation of dangerous driving, identifying:

- racing or competitive driving;
- speed which is highly inappropriate for the prevailing road or traffic conditions;
- aggressive driving, such as sudden lane changes;
- cutting into a line of vehicles or driving much too close to the vehicle in front;
- disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate;
- disregard of warnings from fellow passengers;
- overtaking that could not have been carried out safely;
- driving a vehicle with a load that presents a danger to other road users;
- where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight;
- driving when too tired to stay awake;
- driving a vehicle knowing it has a dangerous defect;
- using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use;
- reading newspaper/map;
- talking to and looking at a passenger where the driver was avoidably and dangerously distracted by that;

---

<sup>9</sup> Oxford University Press

<sup>10</sup> Paragraph C3.11

<sup>11</sup> [1996] 1 Cr App R 444, at 450: "Proof of guilt depends on an objective standard of driving, namely, what would have been obvious to a competent and careful driver. The accused driver's state of mind is relevant only if and to the extent that it attributes additional knowledge to the notional competent and careful driver.... It should be noted that the threshold of proof is high."

<sup>12</sup> Paragraph C3.11

- selecting and lighting a cigarette, or similar circumstances where the driver was avoidably and dangerously distracted.

31. The referenced list from the CPS while it may not be exhaustive, usefully helps to identify a number of circumstances that may contribute to dangerous driving. However, none of those circumstances detailed by the CPS was applicable to this case.

### **The background**

32. The State led evidence from ten of the thirteen witnesses listed on the back of the indictment.

33. Most of the evidence was non-contentious.

34. The major issues in dispute during the course of the trial concerned:

- i. whether Mr Joseph's driving can be faulted; and
- ii. the specifications of the motorcycle that the now deceased Mr Williams was riding.

35. Two other issues that arose from the defence were:

- i. the quality of the investigation of this matter; and
- ii. the reliability of some witnesses.

### **The evidence**

36. On Saturday, the 26<sup>th</sup> of December 2020, Boxing Day, at about 2.00 pm, the defendant, Mr Joseph, was driving a red Suzuki Swift vehicle, registration number TO-976 along the E.O LeBlanc Highway in the north bound lane. It was a rental vehicle. Mr Joseph got possession of the vehicle that very day.

37. There were two persons in the vehicle with Mr Joseph: his female companion, Ms Megan Luke and her friend, Ms Chaune Fagan. They were returning from taking Ms Fagan to buy KFC in Roseau. They were heading to Ms Fagan's home in Goodwill, to pick up another female friend.

38. A police vehicle, (a bus transporting officers to duty), registration number GA-572 and driven by Constable 406 Caleb Challenger, was traveling immediately behind the car that was being driven by Mr Joseph.

39. When Mr Joseph got to Pottersville, approaching the intersection with Charles Avenue, Mr Joseph, who intended to turn right, put on his indicator as he needed to go into the middle 'transition' lane in order to make the turn into Charles Avenue. He entered the middle lane and slowed down ahead of making the right turn into Charles Avenue.

40. Officer Challenger said that he was about 10 feet behind Mr Joseph on the E.O LeBlanc Highway. The police man brought the vehicle he was driving to a stop as, he said, the rear of the Suzuki did not permit him sufficient clearance. He described seeing the start-stop-start to proceed from the center 'transition' lane by the Suzuki, across the lane of the E.O LeBlanc Highway that heads south, to Roseau. The vehicle was going towards Charles Avenue. While still at a standstill, Officer Challenger heard a loud noise, then he saw a motor cycle dragging on the road towards the front of the bus that he was driving. He exited the vehicle and he recognised the person on the street who was riding the bike to be a Police Constable, Philsbert Williams. Officer Challenger did not see the bike approaching along the E.O LeBlanc Highway prior to the collision. He only saw the bike dragging and ending up in front of the police bus.
41. Ms Luke said she was in the front passenger seat of the Suzuki Swift; on the left side. Mr Joseph was driving slowly. She remembered when they reached the intersection of the Highway with Charles Avenue, she just felt the impact of the crash on the vehicle. The impact was on her side of the vehicle. She did not see the bike approaching the vehicle. She only saw the bike on the road when she looked out the window after the collision. She remained in the vehicle until the police came to the scene and she was taken to the hospital.
42. Mr Moorlan Sprott said that he was driving along Charles Avenue, approaching the E.O LeBlanc Highway. There was a white vehicle ahead of him that exited Charles Avenue and turned north. He intended to make that turn as well. He saw the red vehicle in the center lane on the Highway. The vehicle was going to "swing across the road." He heard the sound of the motor bike. Then there was a collision. In cross examination and on reexamination, Mr Sprott acknowledged that he did not see the motorbike before he collision, he only heard it.
43. Police Constable No 338 Miguel Pascal who was attached to the Scenes of Crimes Unit of the Criminal Investigations Department, went to the scene of the collision at about 2.15 pm on Saturday the 26<sup>th</sup> of December 2020. He processed the scene, placed markers and took several photograph. He provided a photograph album; 19 of the photographs that he took were produced at court. His evidence provided a permanent record as to how the scene looked shortly after the collision. He was able to capture, among other things, where the motor bike that Mr Williams rode came to a stop, the location of the car, the debris field from the collision, as well as views of the E.O LeBlanc Highway and Charles Avenue. The photographs stood as documentary evidence, capturing the physical presence of items. His photograph which showed a 27 foot long drag mark on the surface of the Highway leading in the direction towards the debris field supported the State's narrative that the cyclist was traveling north to south. It supported, as well, the defence assertion that Mr Williams lost control of the motor bike prior to the collision.
44. Ex-police officer, Mr Albert George was deemed an expert in Automotive Technology. He is a Gazetted vehicle examiner in the Commonwealth of Dominica. Following the collision, he was tasked with examining both the Suzuki Swift and the motorbike. He noted that the damage to the Suzuki Swift was on the left side of the vehicle, impacting the doors and the front fender below the headlight. He noted that the damage to the vehicle was to the lower part of the vehicle, about one to one and a half feet high. Apart from the physical damage to the Suzuki Swift, he did not find any defect.

45. The Automotive Technician found a few deficiencies with the motor bike. Its tires were bald – without grooves. The braking system, particularly the one involving the rear wheel was defective, and given what he saw, he would not have approved the motor bike to be licensed.
46. Mr George described the motor bike as a GSX-R 650 Suzuki, 2002 model year. He disagreed that the bike was in fact a GSX-R 600. In cross examination he stated that the bike he examined had only one front disk rotor for the brake and was unable to say whether the GSX-R in fact had two rotors to the front. The GSX-R was a ‘road bike’ designed and built for speed. The bike would be about 3-4 feet high when it is upright.
47. Fire Officer Erwin Mitchell said that he knew the deceased and that Mr Williams was in fact “a short man.” Officer Mitchell testified that while he was about 5’ 7”, Mr Williams was shorter.
48. The investigating officer, Sergeant Mervin Andrew during cross examination said that at the time of the collision, the motor bike was not licenced. He said that he owned a motor bike for several years. He also worked in the Traffic Department of the Commonwealth of Dominica Police Force on rotation. Officer Andrew indicated that he was aware of things which may impair someone seeing a motorcyclist on a bright day. These included the colour of the motorcycle; whether or not the rider was wearing reflective clothing; whether or not the headlight of the motorcycle was on (or off); and the speed the motorcycle was being ridden.
49. During the investigation of the collision, Mr Joseph was interviewed by the police. Mr Joseph described to the police how he put on the vehicle’s indicator while he was still on the E.O. LeBlanc Highway. The Defendant told the officers that he drove into the middle lane in order to make the turn into Charles Avenue. He did not see any on-coming traffic. Visibility was good. The vehicle’s windows were up. He was not playing any music in the vehicle. He did not hear the sound of any approaching vehicle. As he proceeded into Charles Avenue, he felt a double impact. He did not see the collision.

### Some authorities

50. A useful starting point in reviewing road fatality cases is **R v Lawrence**<sup>13</sup>. Although this was a case of causing death by reckless driving, **Lawrence** is the foundation case in looking at matters of this type.
51. **Lawrence** was an appeal by the prosecution to the House of Lords against a decision of the Court of Appeal to overturn a conviction of causing death by reckless driving. The Law Lords dismissed the appeal and upheld the Court of Appeal’s decision to quash the conviction. Lord Diplock noted that: “The only question of fact that was in issue was the speed at which the driver was travelling immediately before the impact.”

---

<sup>13</sup> [1981] 1 All ER 974, [1982] AC 510, [1981] 2 WLR 524, HL

52. In **Lawrence**, the defendant rode his motor bike on a heavily trafficked street that was subject to a 30 miles per hour limit and he ran into and killed a pedestrian crossing the road. The deceased person's body was carried on the front of the motorcycle for 45 yards before the cycle stopped. The prosecution's case was that the rider was traveling between 60 and 80 MPH. The cycle's speedometer was jammed at 77 MPH. The defendant contended that the speed he was traveling was 30 to 40 MPH, marginally over the speed limit. The prosecution did not rely upon anything other than excessive speed as constituting recklessness. At trial, the jury sought and received from the trial judge additional directions on what constituted reckless driving. The House of Lords agreed with the Court of Appeal that the conviction had to be set aside because of the directions as to what constituted causing death by reckless driving.

53. Lord Diplock in **Lawrence** referred to the case of **R v Evans**<sup>14</sup> where the judge directed the jury that:

“In law it is now well settled that if the driving is in fact dangerous, and that dangerous driving is caused by some carelessness on the part of the accused, then however slight the carelessness, that is dangerous driving.”

54. The Law Lord noted that the court in **Evans** said:

“If a driver in fact adopts a manner of driving which the jury think was dangerous to the other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best.”

55. The Eastern Caribbean Court of Appeal cited **Lawrence** in the Saint Lucian case of **Anthony Flavius v The Queen**.<sup>15</sup> The Appellant was convicted of causing death by dangerous driving contrary to section 51 of the **Motor Vehicles and Road Traffic Act, No 23 of 1988**. The Dominica Act is in *pari materia* with the Saint Lucia Act.

56. Mr Flavius was found to have driven his bus on the road at a time in the morning when it might reasonably be expected that there would be a fair amount of traffic on the road. He collided with someone on the other side of the road. He admitted that it was a busy junction; that he was driving 10 MPH in excess of the speed limit; and that he did not mash brakes. However he contended that the now deceased person emerged from the blind side of a stationary van and ran across the road. Mr Flavius' counsel at the appeal contended that there was no legal difference between the offences of causing death by reckless driving and causing death by dangerous driving, which would have required the trial judge to give the jury a direction in keeping with the decision in **Lawrence**.

57. Chief Justice Sir Vincent Floissac in **Flavius** said:

---

<sup>14</sup> [1963] 1 Q.B. 412, (1962) 3 All ER 1086

<sup>15</sup> (1992) 41 WIR 114, Saint Lucia Criminal Appeal No 2 of 1991

“Although reckless driving and dangerous driving are similar and cognate offences attracting the same penalty, they are in fact different offences... the prosecution may elect to prosecute for reckless driving (which is not defined or explained in the statute) or for dangerous driving (which is defined or explained by reference to circumstances from which dangerous driving may be inferred).... But if the prosecution elects to charge the accused with dangerous driving, the proper direction to the jury must be by reference to the circumstances from which the section prescribes that dangerous driving should be inferred.”

58. Justice of Appeal Dennis Byron, as he then was, in his concurring judgment in **Flavius**, noted that:

“I have extracted the principle that ‘reckless driving’ is an offence which requires proof that the manner of driving created risk of harm to other persons using the road or damage to property along with proof that in so driving the defendant either gave no thought to risk involved or having recognised the risk decided to take it. Whereas in contrast ‘dangerous driving’ requires proof only that the manner of driving was dangerous to the public for as long as the driver was conscious of what he was doing, it is unnecessary that he was conscious of the possible consequences of his driving.”

59. Justice of Appeal Byron also addressed a central issue of the Appellant’s defence at trial, which, although not identical to the present case with Mr Joseph, has significance. The defence in **Flavius** contended that it was the deceased to ran across the road as he sped along the street, and although he pulled to his right to avoid hitting the person, he could not stop the vehicle. Justice of Appeal Byron noted that if the account given by the prosecution witnesses was true, the verdict would be justified.

“On the other hand if the deceased created the hazard herself by running across the road in front of the appellant and gave him no chance to avoid colliding with her then the verdict would not have been justifiable.”

60. The other member of the Appellate Tribunal in **Flavius**, Madam Justice Monica Joseph, also noted that the Trial Judge was correct in telling the jury that “if the lady was the unreasonable one then the appellant was not guilty.”

61. The Learned Judge noted that: “The legal requirements for the offence of driving recklessly are not the same as those for the offence of driving dangerous to the public.”

62. Justice of Appeal Joseph favoured what was said in **R v Evans**:

“...there is no legal definition of driving to the danger of the public, and there cannot be any legal definition. It has sometimes been said that a very good test is for the jury to make up their minds on the evidence what actually happened, and in their minds eye to put themselves down at the scene of the accident and to ask themselves this question, ‘Had we seen this should we have said without any doubt was a dangerous piece of driving?’ If the answer to the question is ‘Yes’, then the man is guilty, and if the answer to the question is,

‘Oh no’, or ‘We cannot be sure about it’, then he is not guilty.... You have got to make up your minds here whether or not what (the appellant) did was dangerous to the public, that is dangerous to other road users. If it was then even although the dangerous driving was caused by slight negligence, the slightest negligence on his part, he is guilty of the offence of driving to the danger of the public.”<sup>16</sup>

63. In the English case of **R v Woodward**<sup>17</sup>, the Appellant was on his way home with others after having attended a function. He was driving in excess of the speed limit around a bend on the wrong side of the road, where he collided with another vehicle, pushing back the other vehicle 9 meters from the point of impact. One person in the other vehicle died. At the time of the collision the road was wet. At the time the Appellant was also disqualified as a driver for a period of four years – so he was driving while disqualified. He was uninsured. Two of the witnesses gave statements following the incident of them spending several hours prior to the collision consuming alcoholic drinks; they however did not give that testimony at trial. The Appellant’s alcohol level was not tested following the collision, as he was admitted to hospital for his injuries. At trial, the prosecution was only able to adduce evidence that the appellant had a drink, but not the amount of his consumption. He was convicted, but his Appeal against conviction was allowed as the Trial Judge failed to warn the jury against taking the Appellant’s drinking into account as there was no evidence as to the level of consumption.

64. Lord Taylor CJ in **Woodward** also noted that:

“The statutes did not define dangerous driving or driving in a manner which is dangerous to the public. The courts held and juries were directed to apply an objective test. If the jury had been at the scene and witnessed the driving, would they, literally, as the man in the street, have said ‘that is dangerous driving’<sup>18</sup>.”

65. The decision in **Woodward** followed the unanimous decision of a five-member panel in **R v McBride**,<sup>19</sup> where it was noted that:

“the mere fact that the driver has 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 and overriding discretion to exclude such evidence if in the opinion of the court its prejudicial effect outweighs its probative value.”<sup>20</sup>

66. Importantly, it was made clear that the test to be applied is an objective one:

---

<sup>16</sup> At page 1087, letter G

<sup>17</sup> [1995] 3 All ER 79

<sup>18</sup> Page 82 j to 83 a

<sup>19</sup> [1962] 2 QB 167

<sup>20</sup> Page 172

“This court does not propose in any way to qualify the principle which must now be regarded as well established, that in cases of dangerous driving the proper test for the tribunal to apply is what is generally known as the objective test.”<sup>21</sup>

67. **Egbert Hanley v Director of Public Prosecutions**<sup>22</sup> was an appeal by a prison officer who was convicted of causing death by dangerous driving. The Appellant was assigned to transport five prisoners, who were all seated in the back of a Land Rover. He was accompanied by a fellow prison officer. Neither of them was armed. The road was wet and the Appellant was driving extremely fast, estimated at 60 to 70 MPH. The Appellant attempted to overtake a car, the driver of which had pulled aside. The Land Rover touched the car, the Appellant lost control of the vehicle and ran off the road. Most of the occupants of the Land Rover were thrown clear as the vehicle flipped and overturned, pinning the accompanying prison officer and a prisoner under the vehicle. Only the prison officer was pulled clear of the vehicle as a fire consumed it, killing one of the prisoners. Mr Hanley's conviction was affirmed.

68. Justice of Appeal, Brian Alleyne, SC, as he was then, in delivering the court's decision in **Egbert Hanley**, found that the Learned Trial Judge's directions were sound. The Trial Judge said:

“In order to justify a conviction on dangerous driving, there must be not only a situation which objectively was dangerous but there must also have been some fault on the part of the driver causing that situation.

“Fault indicated a failure or falling below the care or skill of a competent and experienced driver in relation to the manner of the driving and to the relevant circumstances of the case including the nature, condition and use of the road and the amount of traffic which was actually at the time or which might reasonably be expected on the road. Such fault will often be proved adequately by inference from the facts of the situation.

“Dangerous driving requires proof that the manner of driving was dangerous to the public.”

69. Some of the critical factors that may be distilled from the English cases of **Lawrence**, **Evans**, **McBride** and **Woodward** and the decisions of the Eastern Caribbean Court of Appeal in **Flavius** and **Hanley**, are:

- a. speed, in excess of the speed limit, may be indicative of dangerous driving;
- b. speed alone does not necessarily amount to dangerous driving;
- c. the test for dangerous driving comprises two parts, (i) the driving must be objectively dangerous; and (ii) there must be some fault on the driver's part;
- d. evidence properly admitted during the trial may be withdrawn from the jury;
- e. the fact that someone died as a consequence of an incident does not mean that automatically someone will be convicted for causing that death; and

---

<sup>21</sup> Page 171

<sup>22</sup> Saint Christopher and Nevis Criminal Appeal No 7 of 2003, delivered on the 20<sup>th</sup> of September 2004

- f. the conduct and manner of use of the road by the victim has to be considered.

## Conclusion

70. Could it be said that objectively, Mr Joseph was driving dangerously? Was there evidence adduced for a jury to consider that: 'Had we seen this should we have said without any doubt was a dangerous piece of driving?'
71. The witnesses Mr Challenger and Mr Sprott had what can be described as 'front row seats' to what occurred. Mr Challenger was driving 10 feet behind the defendant, seated at a higher elevation than the defendant because Officer Challenger was driving a bus while the defendant was in a Suzuki Swift. It was a clear, sunny day, with an absence of any obstruction and the police officer could see clearly, all along the E.O. LeBlanc Highway for several hundred feet, well ahead of Mr Joseph's vehicle.
72. Mr Sprott had first of all a side on view of the Suzuki Swift which was on the E.O. LeBlanc Highway turning on to Charles Avenue.
73. Both Officer Challenger and Mr Sprott saw the vehicle the defendant was driving proceeding at a reasonable pace. The indicator of the vehicle signaled an intention to turn into Charles Avenue. They witnesses saw the vehicle coming to a stop and starting, stopping and starting. Mr Sprott said that there was a white vehicle ahead of him which exited from Charles Avenue onto the Highway, turned right and headed north while the Suzuki Swift the defendant was driving was in the access lane on the Highway to turn right, on to Charles Avenue.
74. Constable Challenger and Mr Sprott, both of whom were there on the scene, did not see the motorcycle before it collided with the defendant's vehicle. Neither did Ms Luke who was seated in the front passenger seat nor the driver, Mr Joseph.
75. Objectively, what the witnesses saw was a driver acting prudently, competently and carefully. He was driving slowly; he put on his indicator; he came to a stop; he ascertained that the road was clear before proceeding.
76. The Learned Director of Public Prosecutions indicated that the State was relying on the **Egbert Hanley** case. The DPP was quite correct in doing so. The DPP referred to paragraph 5 of the judgment in that case where Justice of Appeal Alleyne approvingly said:
- "In order to justify a conviction on dangerous driving, there must be not only a situation which was objectively dangerous but there must also have been some fault on the part of the driver for causing that situation."
77. There was no evidence adduced to demonstrate what was objectively dangerous in the way Mr Joseph drove and no direct evidence that he was at fault.

78. The prosecution has failed to satisfy the requirement of producing probative evidence on a specific element of the offence, which is that at the time of the collision, the defendant, Mr Jenno Joseph, drove the vehicle dangerously, having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic that is actually on the road at the time or might be reasonably be expected to be on the road at the time.
79. Under the first limb of **Galbraith**, the submission of no case to answer succeeds. There is no evidence that the crime alleged of causing the death of Philsbert Williams by driving dangerously has been committed by the defendant.
80. Further, even if there was some evidence of dangerous driving to go before the jury, the case would be stopped at this stage under part (a) of the second limb of **Galbraith**, in that “the prosecution’s evidence, taken at its highest, is such that a jury properly directed could not properly convict” Mr Joseph of dangerous driving.

#### **Order**

81. The jury must be directed to return a formal verdict of not guilty.

**Colin Williams**  
**Resident Judge**

**By the Court**

**Registrar**