

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR2022/0058

BETWEEN:

THE KING

-and-

CLAUDE STEADROY JAMES

Appearances:

Mr. Cedric Dyer for the Crown
Mr. Sherfield Bowen for the Defendant

2024: July, 17th,
23rd

JUDGMENT

[1] **BAKRE, J.:** In the consolidated case of **R v Ruan Roberts ANUHCR2016/0148; R v Caleele Thomas ANUHCR2017/0054** Morley, J. stated that:

- i. "The test for whether driving is dangerous is that the driving must fall far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous, meaning it creates the danger of serious injury or serious damage.*
- ii. Dangerous driving takes wholly innocent lives. Such deaths are not a type of mere unlucky 'accident'. They are the consequence of gross irresponsibility behind the wheel. The standard of driving falls 'far below' the ordinary, not slightly below, and is 'obvious', not arguable, to the observer. It is a primary concern of parents for their children, and generally, that in an event of stupidity, sometimes momentary, sometimes protracted, on the part of someone usually driving*

too fast, sometimes intoxicated, a loved one can be suddenly catapulted from this life. Dangerous drivers are a menace.

- iii. *There is a public interest in safety on the roads. Sentences for this menace should deter. Folk must know that dangerous driving is a serious offence, easily avoided by paying full attention to the road and showing consideration for other road users. The challenges of driving on the island of Antigua are known to all behind the wheel, in that the road surface is sometimes uneven, with holes, there are few pavements, road markings are often only faintly visible, if at all, there are many blind hills and corners, and there is often little street lighting so that pedestrians in the road are without illumination."*

The Indictment

- [2] By Indictment filed on the 20th September 2022 the Defendant was charged with Causing Death by Dangerous Driving contrary to section 57(1) of the Vehicles and Road Traffic Act CAP 460 of the Revised Edition 1992 Laws of Antigua and Barbuda. The particulars of offence state;-
- a. *"CLAUDE STEADROY JAMES, on the 13th day of April 2021, at Joseph's Lane, in the parish of Saint John, in the state of Antigua and Barbuda, did cause the death of ELBA HAREALL PEREZ, by driving a motor vehicle R4647 on a public road, to wit Joseph's Lane, in a manner which was dangerous to the public having regard to all the circumstances, including the nature of the condition, and the use of the road, and the amount of traffic which was actually at the time, or which might reasonably be expected on such road."*
- [3] The Defendant pleaded not guilty to the charge and this matter proceeded to trial on the 9th day of May 2024 following which a jury found him guilty on the 31st of May 2024. He is now before the court for sentencing.

Background Facts

- [4] On 13th April 2021 the Defendant left home with three of his children in a rented blue Honda Fit motor vehicle bearing the registration number R4647. The children were all seated in the back seat of the car; the Defendant drove towards Gray's Farm to purchase groceries. On his way back home he was travelling west to east on King Obstinate Drive and came to a standstill at the traffic light, the light turned green and the Defendant continued driving straight at about 20-25 mph (according to him). When the Defendant got near to the corner of Tindale Road he felt an impact on the side of the car. His children began to scream, and the Defendant continued driving further up the road before he realized that he struck a woman with the

vehicle. Upon this realization the Defendant turned the vehicle around to return to the scene of the accident. The Defendant spoke to police officer that was on the scene and told the officer that he was the one that knocked the woman down.

- [5] The woman was later identified as seventy one year old, Elba Hareall Perez. Emergency Medical Technicians arrived on the scene and reported that Ms. Perez was verbally unresponsive with blood coming from her mouth, it was also reported that she was in a lot of pain and distress. She was admitted to the Mount St. John Medical Centre for treatment on 13th April 2021. Ms. Perez died of her injuries on 30th April 2021.

- [6] The Medical Report prepared by Dr. Karla Callender and dated 6th May 2021 indicates that Ms. Perez was diagnosed with a severe traumatic brain injury, subarachnoid hemorrhage with interventricular extension, multiple left posterior rib fractures with flail segment, left hem pneumothorax, T12 compression fracture and a puncture wound to the left knee. The Post Mortem Examination Report speaks to the autopsy done on 23rd May 2021 by Dr. Petra Miller-Nanton and states that death was due to multiple traumas including severe head injury intracerebral hemorrhage, penetrating lung injuries with hemothorax, penetrating cardiac injuries with hemopericardium and laceration to the spleen.

- [7] When questioned about whether the Honda Fit car presented any issues prior to the accident the Defendant answered "no".

The Social Inquiry Report/Victim Impact Report

- [8] The court has been provided with a Social Inquiry Report/Victim Impact Report dated 2nd July 2024 and prepared by Mr. Kenroy James of the Probation Office within the Probation Unit of the Family & Social Services Division.
- [9] Having interviewed the Defendant's family members and a family friend Mr. James' assessment of the Defendant is that many view him as a quiet and hardworking man. He is not known to have been in any quarrels or fights with anyone in the community and the matter before the court appeared to have surprised residents of the community and his family when they learnt of it.
- [10] Mr. James in his report indicated that he conducted two interviews with the Defendant and on one occasion he broke down in tears. The Defendant also expressed a desire to apologize to the family of the deceased but said he was advised not to do this. The Defendant is said to understand to serious nature of the offence and the profound impact it has had on his family and the family of the deceased. The Defendant's family and residents of the community speak highly of

him and while the matter before the court stands out as a negative factor there are some positives that emerged during Mr. James' investigations, namely, the fact that the Defendant is a devoted family man and maintains two jobs to provide for his family's needs.

- [11] The court was also provided with the Defendant's criminal record which was extracted from the Criminal Record Office on 13th June 2024. The record reveals that the Defendant has a number of convictions, namely, battery on police, resisting arrest, insulting language and disorderly conduct by making noise, he was convicted of these offences on 3rd March 2020.
- [12] Mr. James also interviewed the adult children of the deceased to better understand the extent of the mental, emotional and economic impact the accident would have had on the family.
- [13] Mr. James' assessment is that the deceased's untimely death left her six children, grandchildren and other family members, friends, and loved ones with unanswered questions. Her children broke down in tears when questioned about the death of their mother and spoke about the close relationship they shared with her, they also said that they missed her. One of the deceased's children noted that no member of the Defendant's family apologized or offered condolences for their mother's death and was of the view that the Defendant should be punished as this would give the family closure.

The Plea in Mitigation

- [14] Mr. Bowen for the Defendant made a plea in mitigation for the accused that the Defendant has no criminal record, He is a 40 year old father of eight young children and he is the bread winner of his family. He struggles to maintain his family working two different jobs in order to provide for his children. He is also said to be gainfully employed and remorseful as seen in the Social Inquiry Report.

Constructing the Sentence

- [15] The established principles of sentencing are retribution, deterrence, prevention and rehabilitation. Lawton LJ in R v Sergeant (1974) 60 Cr App R 74 at 77 said:
- a. "Those classical principles are summed up in four words: retribution, deterrence, prevention, rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts."***
- [16] I bear these principles in mind in making a decision of the sentence to be imposed on this Defendant.

- [17] I will look to the approach to sentencing for the offence of Causing Death by Dangerous Driving as articulated in the case of **R v Ruan Roberts; R v Caleele Thomas** as the learned judge therein sought to provide guidance on how to approach sentencing for this offence. In his judgment Morley J. noted that
- a. ***“The starting point for any offence of dangerous driving should be imprisonment, and a fortiori if it causes death. This is because the offence is often a selfish or arrogant one, while potentially lethal, and yet is utterly avoidable simply by being considerate.” Having reviewed various sentencing authorities in the Eastern Caribbean Morley J. noted that “What is common to these cases is that a plea of guilty has often led to suspension of a prison sentence, whereas conviction by a jury has often led to immediate imprisonment, if of good character, for 12-18 months.”***
- [18] I have also considered case law commended to the court by the prosecution for guidance on the sentences imposed in the Eastern Caribbean for the offence of Causing Death by Dangerous Driving.
- [19] In **R v Annik Lawrence ANUHCR2020/0094** the defendant pleaded guilty to causing death by dangerous driving. The defendant was speeding and struck another vehicle which caused her and another passenger to be thrown from the vehicle she was driving. Following an accident which result in the death of a 21-year-old man it was discovered that the defendant was driving a vehicle which was rented and given to her by a friend, a search was conducted at the Antigua and Barbuda Transport Board which revealed that the defendant was not the holder of a driver's license. Rather she was issued a learner's permit which expired some two years prior to the accident. The court having considered the seriousness of the offence imposed a sentence of imprisonment for nine months and disqualified the defendant for obtaining or holding a driver's permit for a period of two years following her release from prison.
- [20] In **DPP v Kimo Liburd SKBHCR2013/0025** In that case the appropriate sentence was determined to be a one-year sentence of imprisonment. The defendant's license was also be revoked for a period of five years and the court ordered that he be required to take an extended test if he wished to obtain a driver's license again.

SENTENCING GUIDELINES

- [21] The court is guided by the Sentencing Guidelines for Homicide Offences Re-Issue 26th November 2021, specifically the guidelines for Causing Death by dangerous Driving. Section 57(1) of the Vehicles and Road Traffic Act provides that the

maximum sentence for the offence of Causing Death by Dangerous Driving is “imprisonment for a term not exceeding five years.”

[22] An examination of the facts of this case shows that this is a serious matter which resulted in the death of the victim as always in this type of offence. The accused was adjudged to have driven in a manner that fell below the standard of a competent and careful driver in the early part of the evening. In the circumstance of this case, the seriousness level falls within “Seriousness: Level C”

[23] Having determined the consequence and the level of seriousness the court must now determine the starting point for the sentence. By consulting the sentencing guidelines the court may impose a sentence of 35% of the maximum sentence, with the ability to vary this sentence ranging from a **non-custodial** to 50% of the maximum sentence. It is thus assessed at Fourteen months (14 months).

[24] After the starting point, this court shall now consider the aggravating and mitigating factors of the offence, and adjust upwards or downwards if required.

Aggravating and mitigating factors of the Offence

[25] The aggravating factors of this offence are as follows:

- a. The victim was a vulnerable road user, to wit an elderly pedestrian.
- b. Minor passengers were in the Defendant’s vehicle at the time of the accident, their ages being 3 years, 5 years, and 7 years.

[26] There are no mitigating factors for the offence.

[27] The sentence is thus increased to sixteen months imprisonment

Aggravating and mitigating factors of the Offender

[28] I will now consider the aggravating and mitigation factors of the offender.

[29] There are no aggravating factors relevant to this Defendant. I noted earlier that this Defendant has a criminal record, however having regard to the fact that those convictions are different in nature to the matter presently before the court I do not regard his criminal record as relevant for the purpose of this sentencing exercise.

[30] The mitigating factors to the offender are that:-

- (a) He has never had an accident and had a good driving record prior to the:
 1. Offence.

- (b) The Social Inquiry Report shows him to be of good character
- (c) It is on record that the accused person immediately went back after the accident and identified himself to the police officer at the scene as the one who ran into the lady. Thus he assisted the police in this regard.
- (d) In the course of the trial, the Defendant also showed genuine remorse for;
his actions.

- [31] Thus the sentence should be reduced ordinarily to 12 months imprisonment.
- [32] In considering this sentence, I factored a lot of things most importantly, that this case involves the loss of life of the victim which is the consequences of this offence. I have however also taken into consideration that no amount of punishment can reverse the action of the accused.
- [33] This court commends to itself the reasoning of Lord Taylor of Gosforth CJ in **R v Shepherd, R v Wernet** [1994] 2 All ER 242 at 245, [1994] 1 WLR 530 at 536 that:
- a. ***“... We wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognize that no term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish”***
- [34] I consider the precedents of sentencing judgments on Causing Death by Dangerous Driving within the jurisdiction which were cited in the cases before coming to a conclusion.
- [35] I sat to seriously consider, what benefit a custodial sentence would be in this instance, either to the accused or even to the victim’s family. This court takes into cognizance the discretion given by the law for a departure from the guidelines. I also commend on the family of the victim, notorious quote of Portia sitting as a judge in **Shakespeare’s Merchant of Venice (Act 4 Scene 1)**, where she stated:-
- a. ***“The quality of mercy is not strained, it droppeth as the gentle rain from heaven. Upon the place beneath; it is twice blessed; it blessed him that gives and him that takes.”***
- [36] In all of the circumstances set out above and in the exercise of my judicial discretion, I find no useful purpose that a custodial sentence would achieve in this circumstance

particularly since the accused may never recover from the effect of a custodial sentence. I am of the view that the appropriate sentence for this offence committed by this accused is that he shall pay compensation in the sum of \$15,000 to the estate of Elba Perez within 90 days and he is fined the sum of \$4,000.00 payable within 60 days in default, he shall spend twelve months in prison.

- [37] Lest there be any misunderstanding, the court is not to be understood as setting the value of a human life at \$19,000 but rather finds that this offender in the circumstances of this case should be punished in this manner.

SENTENCE

- [38] **CLAUDE STEADROY JAMES** for the offence of Causing Death by Dangerous Driving you are fined the sum of \$4,000.00 payable within 60 days. Also you will pay compensation in the sum of \$15,000 to the estate of Elba Perez within 90 days or in default of either payment, he is to serve twelve (12) months in prison.

Tunde A. Bakre
High Court Judge



By the Court

Registrar