

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0048

REX

V

RAE CLARKE

APPEARANCES

Mr Tessaun Vasquez for the Crown.

Mr Jason Hamilton, assisted by Ms Zenitaa Singh, for the defendant.

2024: FEBRUARY 15

SENTENCE

**For causing death of elderly man on pedestrian crossing by dangerous driving
riding a motorcycle wheelie wrong way on road**

- 1 **Morley J:** Rae Clarke aged 32 (dob 24.05.91) faces sentence on a plea of guilty on 04.12.23 for causing the death on 15.10.20 of Conrade Simon by dangerous driving, where mitigation with social inquiry report, and family support, was offered during 07-08.02.24, with sentence adjourned to today 15.02.24 for remarks in writing.
- 2 Simon was aged 85, and in downtown Basseterre he began to cross Pond road walking from north to south on the marked pedestrian crossing, at the junction just beyond Cayon street, controlled by traffic lights, where travelling east from Cayon street Wellington road

turns left north east, and there is a small roundabout to navigate before continuing to proceed east down Pond road.

- a. The incident was partially captured on cctv. It was 5pm, and Clarke was traveling east on Cayon street on motorcycle PB5341, a powerful trail bike with high rear mudguard, where traffic had backed up from the traffic light. As he approached the traffic line, he saw in the distance the light turn green, and he positioned himself to overtake the stationary cars, being at least three, and as he did so, he 'pulled a wheelie', meaning he lifted the front wheel off the ground, riding on the back wheel only, with the front wheel, handlebars and bike bulk being raised in front of him. He overtook all the cars, which slowly began to proceed, and still pulling a wheelie he went the wrong way round the small roundabout, as the more direct route to Pond road, and with the bike pulled upwards in front of him obscuring his view he collided with Simon who was midway on the road, and who would have expected traffic to come from behind his right shoulder round the roundabout, not straight at him.
- b. Having knocked him down, Clarke came off his bike and suffered a left leg injury with bruises to his hands and feet, going to hospital, while Simon was attended by ambulance, as his right fibula and tibia were broken, right thumb too, and he was complaining of pain in his right chest side, where he had four broken ribs. He was conscious, asking for his wife Edith, who saw him at the hospital, and he underwent surgery, but became hemodynamically unstable, owing to traumatic shock and tragically died in theatre.
- c. In her victim impact statement dated 27.11.23, Edith reported the shock of losing her husband, saying *'sometimes I feel very lonely, I do cry sometimes but what amazed me was that no one came and told me that they saw how it happened'*. The funeral had cost \$26000ec, and Clarke's parents had sought to offer a contribution of \$2000ec, though the offer was thought insensitively made, while Clarke did not present himself.
- d. Suit was filed for damages on 15.10.21, being one year on and the last available day under the **Fatal Accidents Act**, about which this court has previously expressed the view needs updating to allow longer time. Clarke has accepted liability, but because he did not inform his insurers in proper time, they have avoided the claim, and progress on settlement has slowed owing to lawyers arguing overlong since 2022 whether a jury should decide the sum, which all seems academic as Clarke is not of means; and Clarke's lawyers have asked for documentation to justify any sum sought rather than just make an offer.

- 3 In the helpful social inquiry report from Khisma Huggins dated 24.01.24, much is said which is positive.
- a. Clarke has a strong close family, and is clever, with 10 CXC's, attending for two years the CFB College, where he excelled and was a prizewinner in electrical electronics, and from 2012 was at university in Trinidad where he graduated in electrical engineering, and was awarded a national electrical technician diploma, returning to St Kitts in 2019.
 - b. Of the offence, he says:

At the time of the incident I could only stand in despair at the scene before me. I hung my head knowing my actions caused pain to someone else. It was really hard for me to accept the tragic incident that took place. After realizing the mistake I made, I was filled with a deep sense of remorse and guilt. I could only imagine how much more distraught the family felt. There is not a day that I do not think about what transpired and how differently things would have been had I obeyed the traffic rules and regulations. It has really changed me as an individual and forced me to look at life with a different perspective, a perspective where I respect the laws of our federation and I am more vigilant of road safety for others. I am truly sorry for the pain my actions have caused.
 - c. Supporters in the report were Clarence Francis, saying Clarke a bright and respectable young man, always in high spirits; Charisse Gumbs was his teacher at the Washington Archibald High School, saying him a genuine soul who is honest and forthright, visiting his centenarian grandmother weekly on Nevis; Clyde Richardson described him as family orientated, kind and helpful, adventurous and living life to the fullest; Codwell France said him very helpful who feels horrible about what he has done; and his mother Jennifer Tross-Clarke describes him as an outgoing free-spirited courageous child.
- 4 Moreover, during hearing on 07 and 08.02.24, family were in support in court, Joville and Donette being daughters of Conrade Simon, and supporting Clarke were his family and friends, while Addison James gave evidence to support Clarke, as a 7th day Adventist church elder, describing him as having developed as a holistic young man who is sorrowful for what happened, suggesting the event unfortunate with no deliberateness.
- 5 Clarke has no previous convictions and a clean driving record.

- 6 It was hinted by Counsel Hamilton Simon had to an extent brought his death on himself because it appears he had begun crossing when the traffic was cleared by green light to drive down Pond road, and so had negligently put himself in danger of being hit by an oncoming vehicle. The court emphatically rejects this submission as Simon could not have expected Clarke to arrive from the wrong way on the roundabout, while oncoming traffic driving correctly could be expected to take longer to get to where he was.
- 7 Before proceeding to construction of the sentence, there are two matters the court wishes *obiter* to address.
- a. On St Kitts & Nevis, the maximum sentence for causing death by dangerous driving, contrary to **s50(1) Vehicles and Road Traffic Act** is five years imprisonment. The Act was first promulgated in 1950 and the section was amended in 1976, now almost 50 years ago, since when there are more vehicles and which are more powerful. Though the maximum of 5 years is found in Jamaica, Antigua, Montserrat, Belize, and Guyana, elsewhere in the Commonwealth the maximum is higher, and the government may wish to reflect on updating the sentencing powers, eg:
- i. Barbados – 10 years;
 - ii. Kenya – 10 years;
 - iii. St Lucia – 15 years;
 - iv. Trinidad – 15 years;
 - v. Australia – 20 years;
 - vi. UK – life;
 - vii. Canada – life; and
 - viii. South Africa – life.
- b. There were two videos of the event captured on the Rscnpt-Telecom cctv system. The first video provides a long shot down Cayon street, from where the wheelie is first pulled and the impact is then only slightly visible in the far distance at the top of the screen; the second video shows a good view of the pedestrian crossing, and mysteriously the footage of the impact is missing, seeming neatly excised from minutes 42-46. Noting this:

- i. the court reminds itself in the recent case of **R v Kelian Hazel 32/23**, concluded on 06.12.23, also originally a case of causing death by dangerous driving, of Deniqua David on 27.08.21, the car Hazel was driving was given back to him, which was then destroyed, and there was no formal prosecution evidence garnered to show if it had been defective, much discussed in court, meaning the Crown could not gainsay the defence assertion car had innocently seized up, with the steering locking and brakes failing, allowing the defence to press for a plea to a lesser offence because the driving could not be proved dangerous; and
- ii. the court has been informed by Crown counsel all cases of causing death by dangerous driving are investigated exclusively by 'the traffic department'.

In light of what are two instances of questionable investigation, though in no way influencing the sentencing outcome in either case, insofar as I am able I urge there should be an inquiry conducted by a detective independent of the traffic department into how these cases were handled, by who, establishing how did it come about the Simon impact is missing from the cctv and how did it come about the Hazel car was returned to him without formal evidence on whether defective, with report to be provided to the Police Commissioner, to reassure the public of the department's work.

- 8 There are ECSC sentencing guidelines on causing death by dangerous driving published in November 2021.
- 9 Concerning step 1, assessing the offence, it falls into category 1A, as 'driving that involved a deliberate decision to ignore, or a flagrant disregard for, the rules of the road so as to cause a high risk of danger' which fits pulling a wheelie the wrong way round a roundabout as an extreme example of such, meriting a starting point of 75%, also endangering others, justifying uplift to 90% the maximum, making 4.5 years or 54 months.
- 10 Concerning step 2, assessing the offender, good character and genuine remorse merit a reduction of 18 months to 3 years.
- 11 Concerning step 3, being credit for the plea, full credit of one-third merits a reduction to 2 years.

- 12 The question now arises whether the sentence should be suspended, which in theory might be possible on St Kitts & Nevis where a sentence is three years or less, or whether only an immediate custodial sentence is appropriate. I have reflected on this carefully and have concluded only immediate custody meets the justice of this case. It is difficult to imagine more egregious driving downtown, over a notable distance, with the motorbike performing not as it should, on one wheel, deliberately breaking road rules as to how the bike is handled and how it is driven on the wrong side of the road, and the wrong way on the roundabout. A man died, and the public will expect time to be served.
- 13 Any time on remand shall count, said to be three days, to be calculated definitively by the prison.
- 14 Further, concerning ancillary orders, the court notes the motorbike was returned to Clarke, who sold it two years ago, so the court cannot consider confiscating it, while there are parallel civil proceedings as to damages, so the court will here make no compensation order, meaning those civil proceedings will take their independent course.
- 15 *Rae Clarke, please stand up.* For the reasons explained, for the offence of causing the death by dangerous driving, of Conrade Simon aged 85 on 15.10.20, by pulling a wheelie and hitting him from the wrong side of the downtown Cayon St-Pond Rd roundabout while he was on a pedestrian crossing, the sentence shall be two years imprisonment, being 24 months, which will not be suspended, time on remand will count, you will be eligible for remission of one-third of your sentence if of good behaviour, meaning you can expect to serve at least 16 months, while the civil proceedings filed on 15.10.21 will continue separately and are unaffected by this sentence.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

15 February 2024