

IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE

NEVHCR2023/0005

BETWEEN:

Director of Public Prosecutions

and

Ryan Powell

Appearances:

Mr. Bervis Burke for the Defendant
Ms. Megan Nisbett for the Director of Public Prosecutions

2023: December 14th
2024: January 18th

JUDGMENT

[1] **THOMPSON JR J:** Sentencing in causing death by dangerous and/or careless driving cases are the most difficult cases for judges to pronounce sentence¹. In preparing these remarks I have noted that sentencing courts in the UK have noted this difficulty, and I can do no better than quote the reasoning of a former Chief Justice in England in Cooksley v R [2003] 3 All E.R 40 in the following terms:

"This offence causes particular difficulty for sentencers. By definition, it is one which always gives rise to extremely serious harm: the death of at least one victim (and in some cases serious injury to others). Understandably this often leads to calls from victims' families, and from the wider community,

¹ See R v Collins [2018] EWCA Crim 113. Cases involving death which result from dangerous or careless driving are amongst the most difficult that the judges of the Crown Court are called upon to sentence. All start from the premise that a life has been lost as a result of culpably poor driving. Such deaths result in anguish and heartbreak for those left behind in a way which experience suggests is much more acute than follows a natural death and is more readily equated with deaths following violence.

for tough sentencing. On the other hand, an offender sentenced for causing death by dangerous driving did not intend to cause death or serious injury, even in the extreme case where he or she deliberately drove for a prolonged period with no regard for the safety of others. The Panel believes that new guidelines will help sentencers to strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence. The Panel drew up its initial proposals on the basis that the outcome of an offence, including the number of people killed, was relevant to the sentence, but that the primary consideration must always be the culpability of the offender.”

- [2] Ultimately, the Court’s focus is the offender’s culpability, and a sentencing judge is engaged in an overall, evaluative assessment, rather than a technical exercise. That judge must consider the relevant driving in the round, taking account of the factors identified in the guideline and any other relevant circumstances to determine an appropriate starting point. See Collins [2018] EWCA Crim 113. It bears repetition that courts are required to approach the sentencing task objectively and dispassionately and should not be overborne or intimidated into imposing unjust sentences. See AG Reference No. 66 of 1996 [1998] 1 Cr. App. Rep (S) 16.
- [3] It would take too long for me to read out Justice Morley’s comments at paragraph 2-8 of his judgment in R v Ruan Roberts and R v Caleele Thomas, a decision from Antigua in 2018. Suffice it to say that this court echoes his concerns about the need for the state to increase its efforts to educate the public on road safety and revamp the driving test regime in order to require offending drivers who cause harm or kill to be required to pass mandatory tests or courses.
- [4] Time and again, judges when called to sentence in causing death cases have said that motor vehicles have to be driven responsibly. The fact that road fatalities are not more prevalent in St Christopher and Nevis is due to the good grace of the Almighty as opposed to any circumspect driving by the motorists in these beautiful islands. Every judge of the ECSC is either a driver or passenger and is able to see for themselves the reckless speed, hazardous overtaking and daily maneuvers undertaken on our roads. Each road fatality triggers an outcry for ‘something to be done’ and then nothing is done until the next fatality when the cycle repeats itself again.
- [5] Section 69 of the Vehicles and Road Traffic Act is clear that an order may be made for the suspension of the license of a person charged with causing death by dangerous driving pending the determination of the charge. The defendant’s driver’s license should have been suspended from his first appearance in the magistrate’s court. This court does not know whether any such argument was advanced to the magistrate, but this court could not of its own volition suspend his license until and unless the DPP’s Chambers drew the fact that the defendant was still driving to its attention. No such application having been previously made, this court was only empowered to order that the defendant be disqualified from holding a license pursuant to section 68, as part of this sentencing exercise. The length of the disqualification of the license and the conditions that must be met for its return will be dealt with later in this judgment.
- [6] Before turning to the agreed facts of this offence, this court is compelled to point out that at paragraphs 2-9 of its 2020 judgment in the case of DPP v Christopher True, the relevant legislative and historical background to causing death by careless driving was outlined. The historical background puts events into their chronological context, but it is important to note that there are only six offences in St Christopher and Nevis which involve the taking of a human life.

- [7] Murder and manslaughter need no elaboration. The maximum penalty for both offences is life imprisonment. Infanticide, which can only be committed by women and only in relation to a child 12 months or younger attracts the same penalty as manslaughter.
- [8] Using the ECSC Sentencing Guidelines, the starting point for the least serious form of murder (assuming such a thing exists) is a starting point of 25 years imprisonment with a range of 15 to 35 years imprisonment.
- [9] The same analysis for the lowest form of manslaughter results in a starting point of 6 years imprisonment with a sentencing range of a non-custodial sentence to 9 years imprisonment. Infanticide would attract a similar starting point to that imposed for some forms of manslaughter.
- [10] Section 15(2) of the Dogs (Control and Licensing) Act provide for a fine of \$10,000 or imprisonment for a term of not more than 5 years if you are the owner of a dog and your dog causes the death of or kills a person.
- [11] Causing death by dangerous driving attracts a 5-year term of imprisonment and causing death by careless driving attracts a maximum term of 3 years imprisonment.
- [12] All the same, if you drive your car carelessly and kill someone in St Christopher and Nevis, the maximum penalty that can be imposed is less than the penalty that can be imposed if your dog kills or causes the death of someone.

Agreed Facts

- [13] During the early morning hours of July 27th, 2022, the deceased was in the cultural village with her mother, her cousin and others. The deceased told her mother and others that she would get a lift home with the Defendant.
- [14] The mother of the deceased observed that the defendant seemed drunk and recalled seeing him by the bar smoking and drinking and recalled him staggering when he was walking towards her. The Defendant accepts that at the time he drove off he was impaired by the consumption of alcohol and that his impairment was low.
- [15] The mother of the deceased asked her daughter if she is sure that she wants to go with the defendant. The deceased said 'yes mommy, I'll be good'. The deceased's mother told the defendant to "please, please take home my daughter safe". The Defendant replied "yeah man I got you, I safe."
- [16] The deceased's mother also recalled seeing the Defendant burn out tires which left a lot of smoke when he drove off with her daughter. At about 4:26 am on July 27th, 2022, the Cotton Ground Police Station received a report of a fatal car accident in the Jessups area along the Island Main Road.
- [17] The accident investigations revealed that PA-9681, a white Suzuki Jimny, driven by the Defendant was traveling from Charlestown heading to Newcastle when the vehicle hit the curb on the left side of the road in the vicinity of the Island Main Road in Jessups. The Defendant then pulled to the right,

hit a tree trunk on the right and uprooted the tree trunk. The Defendant's vehicle then flipped over and landed on the upper body of the deceased who was his front seat passenger. The deceased was pronounced dead at the scene of the accident and the cause of death was severe traumatic head injury to wit, skull crush injury.

[18] The Defendant offered the following explanation to the Police:

"I was traveling from Charlestown heading to my home at Fountain Village and at the same time I was giving Tav a ride at Newcastle. When I came around Jessups Village the vehicle bump the sidewalk and a lose control of the vehicle and the vehicle over turned"

[19] The Defendant accepts that he was driving at 60 mph at the time of the accident, three times the speed limit for that area of 20 mph.

[20] The Defendant had sought a sentence indication from this Court on October 6th, 2023, and this Court indicated that if the Defendant were to plead guilty then any sentence to be imposed would not exceed 12 months' imprisonment. At the sentence indication hearing this court indicated that it would not be able to say whether any such sentence would be suspended or not. On November 7, 2023, the Defendant plead guilty to causing death by careless driving and the prosecution offered no evidence on the count of causing death by dangerous driving.

Legal Framework

[21] The maximum penalty for causing death by careless driving is 3 years imprisonment.

[22] The ECSC Guideline for Causing Death by Dangerous Driving does not apply to offences of causing death by careless driving. For this reason, counsel for the Crown and Defendant were content to invite this court to apply the UK Guideline for causing death by careless driving with one important modification.

[23] The UK maximum penalty for causing death by careless driving is 5 years imprisonment. For this reason, the UK Guideline cannot be simply transposed to St Christopher and Nevis. Therefore, everyone agreed that the following table in the ECSC Dangerous Driving Guideline. That table provides useful guidance on the starting point in a case for causing death by dangerous driving and everyone agreed that the following table should be used to determine the starting point for the defendant's offending. All the same, the ECSC Dangerous Driving Guideline starting points as set out below provide useful guidance to this court on how to arrive at a starting point.

	Seriousness - Level A	Seriousness - Level B	
Consequence – death of the victim	Starting point 75% x 36 months = 27 months	Starting point 55% x 36 months = 19.8 months	Seriousness - Level C

	Range 60%-90% x 36 months = 21.6 months to 32.4 months	Range 40%-70% x 36 months = 14.4 months to 25.2 months	Starting point 35% x 36 months = 12.6 months Range non-custodial-50% x 36 months = non-custodial to 18 months
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[24] Everyone agreed that the Defendant's offending fell into Category B on the Guideline because:

- (i) His driving was impaired by the consumption of alcohol and
- (ii) He drove at a speed that was inappropriate (3 x the speed limit) for the road conditions.

[25] In this Court's view, Level A is reserved for cases where the driving was just below the threshold for dangerous driving or an extreme example of Category B driving. Category C is reserved for cases where the driving was just over the threshold for careless driving and related to momentary lapses in concentration. Simply put, the Defendant's driving was too serious for Category C but not so serious as to warrant placement in Category A.

[26] The relevant starting point was thus 19.8 months with a range of 14.4 months to 25.2 months imprisonment. This court's next task was to assess whether the Defendant's offending was aggravated in any way.

Aggravating Factors of the Offence:

[27] The prosecution contended that the Defendant's offending was aggravated by the fact that he had committed a further offence of exceeding the speed limit and that the defendant's impairment through voluntary consumption of alcohol also aggravated his offending. To his credit, counsel for the Defendant accepted that the voluntary consumption of alcohol was an aggravating feature of all offences and thus would aggravate his client's offending.

[28] The fact that the Defendant's impairment level was characterized as 'low' is of no moment. Impairment means that the defendant's ability to exercise his motor skills when operating a potentially lethal instrument at thrice the speed limit (even on possibly empty roads at 4 am) aggravates his offending. Simply put, voluntary consumption of alcohol is an aggravating feature of all criminal offending.

[29] On the issue of speeding, counsel for the defendant submitted that the fact that the defendant drove in excess of the speed limit determined the court's categorization of his client's offending and that it would be 'double counting' to take speeding into account as both an aggravating factor when that fact had already been considered by the court.

- [30] This court agrees with counsel for the defendant. It was open to the prosecution to charge the defendant for speeding in addition to causing death by careless driving. They opted not to do so. The evidence of the defendant's speed came from him as there were no witnesses who could speak to the Defendant's speed at the time of the accident. In this court's view, the evidence of speed is central to the court's assessment of the Defendant's culpability. To take the Defendant's speed into account as an aggravating factor would be to double count and thus be unfair to the Defendant.

Mitigating Factors of the Offence:

- [31] Counsel for the Crown submitted that the Defendant's offending was only mitigated by the fact that he had no previous convictions.
- [32] It is noteworthy that in the UK Guideline good character and no previous convictions are treated as separate mitigating factors. Therefore, in the UK if you have not previously offended then you are a person who has no previous convictions. If you are a person of proven good character, you should therefore have additional credit for that proven good character.
- [33] For example, at paragraph 26 of their judgment in Collins [2018] EWCA Crim 113 the Court of Appeal found that some evidence of positive good character lay in the fact that Mr. Collins assisted a local couple who describe themselves as "*not in the first flush of youth*" by doing all their gardening and many household jobs. He also had a strong record in raising money for charity. In a Caribbean context positive good character may be proved in a number of ways.
- [34] In this court's view, this distinction accords with well-established principles of law on good character generally. Good character is separate from the absence of previous convictions in the UK Guideline and is consistent with the reasoning of the Privy Council in the well-known BVI case of DPP v Varlack which confirms that in some cases it may be appropriate to withhold the good character direction even where the defendant has no previous convictions.
- [35] For what it is worth, the Privy Council in DPP v Varlack did not promulgate any new law but rather confirmed that the trial judge (Olivetti J) was right to withhold the good character direction since the circumstances of that case warranted its withdrawal. In this court's view, that analysis is fitting and proper. For the avoidance of doubt, this court gives full credit to the defendant for the fact that he has not previously offended and is of good character in the fullest sense.

Mitigation for killing close relative or friend & genuine remorse:

- [36] Crown counsel was of the view that the fact that the deceased and the defendant were relatives and close friends did not mitigate his offending. Furthermore, Crown counsel doubted whether the Defendant was genuinely remorseful and supported her submission by the fact that the social inquiry report indicated that the defendant had failed to apologize to mother of the deceased.
- [37] This court has not found it easy to resolve these questions. On the one hand, this court is struck by the stark contrast between the defendant's collateral contacts who highlight the nature of the relationship between the deceased and the defendant. On the other hand, the statements of the family of the deceased are striking in the way they do not discuss any such closeness between the defendant and deceased.

- [38] In this court's view the true position is somewhere in the middle. This court is satisfied that the family of the deceased has downplayed the nature of the relationship between the deceased and the defendant. Clearly, they trusted the defendant to take the deceased home and there was no challenge to the fact that the Defendant would drive the deceased from place to place when she needed a ride.
- [39] On the other hand, this court is satisfied that the family of the defendant have played up the nature of any familial bonds between the two. This is not to say that there was not some affinity between the deceased and defendant, but this court is satisfied that this case is not analogous to the classic case where one close relative has visited harm on another thus causing significant anguish to both families.
- [40] As a matter of law, courts are required to assess victim impact statements with great care. See Attorney General's Reference No. 77 of 2002 [2002] EWCA Crim 2312. Ultimately a court must sentence on the basis most favorable to the Defendant.
- [41] The law is clear. The views of the victim's family can mitigate the Defendant's offending if they have forgiven the Defendant or if it would add to their anguish if a custodial sentence for example were imposed on a defendant. Exceptionally, then in those circumstances there is room for a defendant's offending to be further mitigated by these facts. See Hutchinson (1994) Cr. App R (S) 134 and Mills [1998] 2 Cr. App Rep (S) 229.
- [42] As an aside, in future, the social development department may wish to consider taking statements from a wider cross section of the community in order to discern the true position. The loss of a life in tragic circumstances understandably provokes strong feelings. The views of as many members of the community that are unconnected to the deceased or defendant would have been extremely helpful to the court.
- [43] On the issue of remorse, both the UK and ECSC guidelines for all offences require a court to be satisfied that the Defendant is genuinely remorseful before credit can be afforded as a mitigating factor. It is important to note that the lack of remorse is not an aggravating factor but its presence, if proven, does mitigate the Defendant's offending. This court is mindful of the fact that remorse can present itself in many different ways and bears in mind the UK guidance on this issue that:
- "A simple assertion of the fact may be insufficient, and the offender's demeanour in court could be misleading, due to nervousness, a lack of understanding of the system, a belief that they have been or will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity etc. If a PSR has been prepared it may provide valuable assistance in this regard."
- [44] The fact that the Defendant did not apologize to the family of the deceased does not mean that he is not remorseful. The evidence of the social worker, Ms. Udorna Liburd, was that the Defendant had expressed some regret or remorse and that she was of the view that he was sorry for the harm that he had caused. Incidentally, Ms. Liburd was surprised to learn the agreed facts since these facts appeared to be at odds with what the defendant had said to her when he was interviewed for the purpose of the social inquiry report.

[45] Remorse means the strong feelings of sadness and regret for a wrong done and indicates an acceptance of responsibility. This court is satisfied that the Defendant is genuinely remorseful and that his remorse is inextricably linked to the fact that the deceased was related to him. In this court's view, it would be impossible to separate out the credit due for the fact of the defendant's relationship with the deceased from his evident remorse at having unfortunately caused her death.

[46] Aggravating factors move the starting point upwards. Mitigating factors operate to reduce the sentence. Evaluating the aggravating and mitigating factors confirms that a sentence in the region of 12 months is entirely appropriate when one considers that the starting point is 19.8 months and is thus consistent with the sentence indication that was given. The defendant's offending is aggravated by his voluntary consumption of alcohol. The defendant's offending is mitigating by his genuine remorse at having killed a relative and previous good character.

[47] That sentence is further discounted by 1/3 to consider the fact of the Defendant's prompt guilty plea and confirms that a sentence of several months' imprisonment is warranted.

Whether to suspend any sentence:

[48] Counsel for the Crown submitted that where a court is considering a sentence of 3 years imprisonment or less a court should consider whether that sentence should be suspended. (This is pursuant to section 6 of the Alternative Sentencing Powers Act.)

[49] In assessing whether to suspend any term of imprisonment this court is guided by the following considerations as enumerated in the ECSC Practice Direction on Suspended Sentences

The court may consider the following non-exhaustive list of factors in exercising its discretion whether to suspend a sentence:

- a. Can appropriate punishment only be achieved by immediate custody?
- b. Does the offender present a risk or danger to the public or to the victim?
- c. Has there been a history of poor compliance with court orders?
- d. Is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation (which may be particularly relevant when sentencing a person under 21)?
- e. Is there a realistic prospect of rehabilitation?
- f. Is there strong personal mitigation?

[50] The United Kingdom has also promulgated their own guidance on the factors that affect whether to impose a suspended sentence and these are almost identical to the Practice Direction except that the UK guidance analyses the factors as for or against suspension thus further simplifying the judge's task.

Factors indicating that it would not be appropriate to suspend a custodial sentence	Factors indicating that it may be appropriate to suspend a custodial sentence
Offender presents a risk/danger to the public	Realistic prospect of rehabilitation
Appropriate punishment can only be achieved by immediate custody	Strong personal mitigation
History of poor compliance with court orders	Immediate custody will result in significant harmful impact upon others

- [51] In this court's view there is no evidence that immediate custody will result in significant harmful impact upon others. The Defendant is the father of a child born on November 5th, 2023. That child was born in the UK and does not yet reside with the Defendant. There is no evidence that the Defendant is the primary caregiver or will be that child's primary care giver such that an immediate custodial sentence will cause significant harmful impact upon the child. No doubt the mother of the child can benefit from his assistance, but the law requires evidence of significant harmful impact upon others and that is not the case here.
- [52] Strong personal mitigation in this court's view denotes something more that warrants suspension. This court's analysis of the mitigating factors above do not lead to a finding of strong personal mitigation. Clearly there is some mitigation, but this court is unable to satisfy itself that there is such strong personal mitigation to warrant suspension.
- [53] In this court's view, strong personal mitigation is not a closed category. Either the preponderance of the mitigating factors or any mitigating factors (depending on the circumstances) can amount to strong personal mitigation. Even making generous allowance for the matters set out above, none of the accepted mitigating factors in this matter translate into strong personal mitigation such that it may be appropriate to suspend the defendant's sentence.
- [54] The Defendant presents a realistic prospect for rehabilitation and there is no evidence that his incarceration will make him more likely to turn towards criminality. Any sentence imposed will require that he complete a road safety course as a precondition to the return of his driver's license.

Defendant's post offence conduct:

- [55] During the Defendant's sentencing hearing, counsel for the Crown drew to this Court's attention the fact that on December 6th, 2023, 8 days before the sentencing hearing in this matter, after the Defendant drove in Charlestown and collided with another vehicle.
- [56] The collision was a minor one and the Crown accepted that the time for initiating any summary criminal proceedings against the Defendant for this collision would have expired. For what it is worth the Crown were of the view that a charge of careless driving would have been appropriate. To his credit, the Defendant accepts that he was at fault since his mirror collided with and damaged the mirror on a parked vehicle in Charlestown.
- [57] Counsel for the Crown argued that the fact of this accident both aggravated the defendant's offending and was the clearest sign that he posed a danger to the public with his driving in view of his driving record. To his credit defence counsel argued that the court could take this collision into account but that it would not aggravate his client's offending and any negative inferences could be mitigated by the suspension of his driver's license and/or a suspended sentence.
- [58] In this court's view, the post offence accident is relevant to the issue of the Defendant's driving record and must affect this court's assessment of his suitability for a suspended sentence. The issue of whether the defendant poses a risk to the motoring public is well made out by the facts before this court. His poor driving record and collision while awaiting sentence tilt the balance against suspension.
- [59] This court does not agree that this collision aggravates his offending as it came after his offence, but the Crown was right to draw this information to the court's attention as it provided a fuller picture of the Defendant's driving.
- [60] In this Court's view, the Defendant's post conduct offending and his poor driving record (which has not previously attracted any criminal sanction) confirms that the Defendant poses a risk to the public. A suspended sentence would be inappropriate in those circumstances.
- [61] This Court has not found it easy to reconcile all these competing considerations on whether to suspend any custodial sentence. The Defendant's post offence conduct is a litmus test on the issue of whether to suspend any sentence of imprisonment. If the past is all prologue², the clearest argument against suspension of any custodial sentence is the fact that the Defendant drove carelessly and caused damage to a parked vehicle at a time when he had already pled guilty to causing death by careless driving and 8 days before his sentencing hearing in this matter.
- [62] A suspended sentence would have led to a custodial sentence if any criminal proceedings were initiated against the Defendant because of that accident. Even without any criminal proceedings, there can be no argument that the fact of that collision confirms that the Defendant's driving (while on bail and awaiting sentencing) poses a danger/risk to the public.
- [63] An appropriate punishment is thus a custodial sentence.

² See Shakespeare's *The Tempest*, Act II, Scene I

- [64] 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:

'... we wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognise 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.'

- [65] In this court's view, immediate custody is an appropriate punishment. Both the guideline and the following cases suggest that even in cases of causing death by careless driving and even with a guilty plea a custodial sentence is warranted in principle. There is no general definition of where the custody threshold might lie. The circumstances of each case and the application of the relevant guidelines point a court in a direction, but the sentence is ultimately a matter for the court in each individual case.

- [66] The following cases were drawn to the attention of counsel, and they were given the opportunity to make any submissions they wished to make. Counsel for the Crown argued that the cases cited above point towards a custodial sentence. Defence counsel argued that the cases were distinguishable in view of the difference in maximum penalty between the UK and St Christopher and Nevis.

- [67] In R v Odedara [2009] EWCA Crim 2828 the defendant pled guilty to causing death by careless driving and was sentenced to 4 months imprisonment. In Odedara the Court of Appeal stated

"This offence may carry imprisonment. It does not, however, inevitably or necessarily do so. Plainly some acts of careless driving involve the kind of serious fault which are likely to call for sentences of imprisonment. We attempt no kind of list, but they might clearly include the kind of case where a driver drives deliberately when his attention is elsewhere (as for example trying to use a telephone) or the driver who drives when affected by the consumption of alcohol or drugs. So too might bad driving associated for example with the theft of the motorcar"

- [68] In Odedara, death was caused from a momentary failure of attention. The road was straight. Mr. Odedara was neither impaired nor speeding. He did not see a motorcycle that he should have seen. That is a far cry from an impaired Defendant driving for at least 5 km (the distance between the cultural village and the scene of the accident). The fact that the 4-month sentence of imprisonment was quashed and replaced by a community order confirms to this court that in a case with the matters set out above, a custodial sentence may well be appropriate.

- [69] In R v Forster (Rachael) [2012] EWCA Crim 2142, the Court of Appeal upheld a 12-month custodial sentence on a guilty plea to causing death by careless driving. Ms. Forster had no previous convictions, was remorseful, sustained profound physical and psychological injuries. Ms. Forster's culpability lay in her failure to concentrate for approximately 14 seconds, which meant that she continued driving at a speed that was too late for her to stop.

- [70] In Forster, the Court of Appeal was satisfied that her culpability fell in the middle category of this offence and even with the aggravating and mitigating factors outlined, 12 months' imprisonment was not manifestly excessive or wrong in principle. Making allowance for the difference in maximum

penalties between the UK and St Christopher and Nevis, a custodial of several months' length is not wrong in principle.

[71] Finally, in **R v Smart (Deidre) [2014] EWCA Crim 1119** the Court of Appeal reduced a sentence of 9 months imprisonment to one of 4 months imprisonment which was analogous to the time that Ms. Smart had served at the time her appeal came on for hearing. Crucially the Court of Appeal was of the view that a custodial sentence was not wrong in principle but that such a sentence should be akin to the time that Ms. Smart had already served.

[72] In Smart, her driving also fell into the intermediate category as it involved an unexplained failure to stop or steer her vehicle in the 6 seconds that the deceased was in her view. All the foregoing cases make it clear that momentary lapses in concentration even without speeding or alcohol impairment can attract custodial sentences of several months' duration.

[73] As long ago as March 2012, Justice Olivetti in the case of R v Wendell Varlack reminded herself of her own words in the case of R v McDonald Williams (both cases of causing death by dangerous driving from the BVI) that:

"How many more deaths are we willing to tolerate? In my view one more is too many. To my mind the imposition of a fine cannot have the desired impact... in these circumstances only a custodial sentence would reflect a fitting punishment having regard to the magnitude of the harm caused and serve to deter others."

[74] Up until recently, non-custodial sentences for causing death by dangerous driving were the norm. Fines combined with suspended sentences were the usual orders made whether after trial or guilty plea. Consistent with the approach in the UK and the wider Commonwealth there has been a shift³ towards the imposition of custodial sentences for causing death by dangerous driving. In this Court's view, causing death by careless driving is not exempt from this approach.

[75] The Defendant spent no time in custody or on remand and his driver's license was not suspended until the sentencing hearing on December 14, 2023. In passing, this court notes that there was no accident reconstruction evidence adduced by the Crown. The Defendant's vehicle was not examined by any mechanical expert. Additionally, there was no blood alcohol evidence for a court to objectively determine the level of the Defendant's impairment.

[76] Time and again courts have noted the failure of the Royal St Christopher and Nevis Police Force in this regard to no avail. A copy of this judgment will be served on the Attorney General. The Attorney General can then determine whether Parliament is minded to convene a committee to hear from the Commissioner of Police on what protocols and/or training has been undertaken or will be undertaken in order to address these and other road traffic related issues.

³ See R v McDonald Williams; R v Wendell Varlack; (Territory of the Virgin Islands); DPP v Kimo Liburd; DPP v Elvis Richardson; (St Christopher); R v Ruan Roberts and Caelle Thomas; (Antigua) R v Regino Nicholas (Montserrat); R v Simon Joseph (Grenada); R v Annik Lawrence (Antigua)

- [77] The UK Community and Custodial Sentences Definitive Guidelines contemplate appropriate rehabilitative requirements and prohibited activity requirements. The circumstances of this case require that the Defendant be prohibited from operating a motor vehicle. Driving a motor vehicle is a privilege and not a right. The Defendant's is therefore disqualified from holding a driver's license or operating any class of motor vehicle for 17 months from the date of his release from HM Prison.
- [78] The focus on the rehabilitative aspect of sentencing means that the Defendant should be required to learn from this experience. The idea of rehabilitation is to assist the offender to return to society as a law-abiding citizen. The Defendant's poor driving record, including the circumstances of this case displays a disregard for the traffic laws and a lack of care for the lives of other road users. This court therefore believes that the Defendant can benefit from a course on proper and responsible road use. Regrettably no such courses exist in the Federation thus requiring the Defendant to complete the Onroad Driving Education Suspended License⁴ online course, or some other nationally accredited online road safety program at his own expense. Successful completion of the said course is a precondition to the return of the Defendant's driver's license at the end of his disqualification from driving period.
- [79] Completing the trilogy of comments from former UK Chief Justices, the late Lord Lane CJ said in Boswell [1984] 1 W.L.R. 1047 that:
- "It is a trite observation, and I make no apologies for making it, that the motor car is a potentially lethal instrument. Any driver who fails to realise that what he is doing at the wheel is creating a risk when to any ordinary person such risk would be obvious, or, even worse, sees the risk and nevertheless takes a chance on avoiding disaster and so kills, is prima facie deserving of severe punishment. In our view such punishment should in many cases involve immediate loss of liberty."*
- [80] The Defendant is thus sentenced to 6 months' imprisonment.

**Patrick Thompson Jr
Resident High Court Judge**

BY THE COURT

REGISTRAR

⁴ <https://onroad.com.au/Programs/Suspended-Licence>

