

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR 2019/0015

DIRECTOR OF PUBLIC PROSECUTIONS

AND

CHRISTOPHER TRUE

Appearances:

Ms. Greatess Gordon for the Crown
Mr. Jason Hamilton for the Defendant

2020: January 20;
March 3, 20;
June 9, 12, 16.

JUDGMENT

- [1] **THOMPSON, JR. J:** By an indictment filed on July 17th, 2019, the defendant was charged with the following offences. Count 1 charged the defendant with causing death by dangerous driving contrary to section 50(1) of the Vehicles and Road Traffic Act (“the Act”). Count 2 charged the defendant with causing death by careless driving contrary to section 50 (4) of the Act. Both counts alleged that the defendant by his driving of motor vehicle PA-5711 on November 18th, 2017 at Wellington Road caused the death of Mark Hodge (“the deceased”).
- [2] On January 20th, 2020 and at the request of his counsel, the indictment was put to the defendant and he pleaded not guilty to count 1 which charged him with causing death by dangerous driving and guilty to count 2 which charged him with causing death by careless driving. The defendant had previously pleaded not guilty to both counts on the indictment on October 4th, 2019 when the indictment was first put to him. The Crown then withdrew count 1 of the indictment and directions were then

given for a sentencing hearing with the matter being heard on the days set out above.

Historical Background:

[3] Road traffic offences are a relatively recent addition to the criminal law. The steam engine became popular during the Victorian age. Therefore, it was necessary to pass legislation to regulate the use of what were then called 'locomotives' as Victorian society developed. The following acts were passed in relatively quick succession to deal with the rapid growth and development of the automobile industry.

- **The Locomotives on Highways Act 1861;**
- **The Locomotive Act 1865;**
- **The Highways and Locomotives (Amendment) Act 1878;**
- **The Locomotives on Highways Act 1896;**
- **The Motor Car Act 1903 and;**
- **The Road Traffic Act 1930**

[4] The UK Road Traffic Act of 1930 was the precursor to the modern road traffic regime. Sections 11 and 12 of the Road Traffic Act sought to articulate and criminalize reckless driving and careless driving. Significantly, the 1930 UK Act did not prescribe or create any offence of causing death by dangerous or careless driving¹. Four years later and as a result of a record number of casualties in road traffic accidents in the United Kingdom, the Road Traffic Act of 1934² was passed.

[5] Section 34 of the UK Road Traffic Act of 1934 specifically provided that a person indicted for manslaughter could be convicted of reckless or dangerous driving. Manslaughter was thus the usual charge when death was caused as a result of a road traffic accident. If death was not caused, then a jury would be entitled to convict

¹ Significantly, section 35 of the Offences Against the Person Act of 1861 created the offence of causing bodily harm by wanton or furious driving. This offence is punishable by a maximum penalty of a 2-year term of imprisonment. The maximum penalty has been the same since 1861.

² The references to the UK Road Traffic Act are necessary since St Christopher and Nevis did not become an independent country until September 19th, 1983. Prior to independence, UK legislation was received by or extended to its colonies by the colonial legislatures.

for reckless or dangerous driving. In 1972, the UK Road Traffic Act created the offence of causing death by dangerous driving which was only triable on indictment and punishable by a 5-year maximum term of imprisonment. Therefore, up until 1972, manslaughter or theoretically, murder, were the charges that were usually laid as a result of fatal road traffic accidents.

- [6] Finally, section 2B of the 1988 UK Road Traffic Act created the offence of causing death by careless driving. The UK penalty for causing death by careless driving is a maximum of 5 years imprisonment and the penalty for causing death by dangerous driving is a maximum of 14 years.
- [7] In Saint Christopher and Nevis, the 2009 amendment to the Act created the offence of causing death by careless driving. The effect of this amendment was to create a new offence of causing death by careless driving which attracted a 3-year maximum sentence while causing death by dangerous driving attracted a 5-year maximum sentence of imprisonment.
- [8] It is important to note that criminality which would have ordinarily attracted a manslaughter charge, now attracts a 3-year maximum sentence of imprisonment. Categorizing the driving as dangerous or careless does not detract from the fact that the driving caused death. In this Court's view, the three- and five-year maximum sentences for what was previously known as 'motor manslaughter', appears anomalous. This is particularly so when one considers that the maximum penalty for manslaughter is life imprisonment.
- [9] For the avoidance of doubt, this Court's judgment is not an attempt to agitate for legislative reform. This Court is compelled to apply the law but thought it prudent to set out the historical and comparative legislative background since it is relevant to the sentence to be constructed and imposed on the defendant. This Court now turns to the relevant facts as agreed by the Crown and Defence.

Agreed Facts:

- [10] On the 17th November, 2017 the defendant called his friend and co-worker Mr. Leonard Hobson and invited him to go out for barbecue of which Mr. Hobson

accepted. The defendant then drove his Wrangler Jeep PA- 5711 and picked up Mr. Hobson at his home in Keys Village and they journeyed to Basseterre.

- [11] When they got to Basseterre at a time between 10:30 and 11:00 pm they went to a bar and barbecue stall on the Bay Road situated in front of Coury's Building and bought barbecue chicken. They stayed there for a while.
- [12] Mr. Hobson then told the defendant that he was ready to go home as he had to work the following day. So, they left the bar and barbecue stall in the defendant's jeep and east on the Bay Road, then travelled northwards along Adlahm Street to South Independence Square Street on to Wellington Road travelling East headed to Keys Village.
- [13] On 18th November 2017, between 12:00am and 1:30am the defendant and his passenger headed for Keys Village got to the vicinity of the Flow Grounds which is adjacent to the Power Station. There, the defendant travelling at an undetermined speed but in excess of the speed limit on a lighted straight road, collided into a parked vehicle PA-9838 and the owner of the said vehicle Mr. Mark Hodge. Vehicle PA-9838 then collided in Neysa Tyson's vehicle which was parked behind it.
- [14] As a result of the said collision all three vehicles were damaged and Mr. Mark Hodge who was the owner of the said vehicle suffered injuries which ultimately resulted in his death.
- [15] Prior to the collision, Mr. Hodge (deceased), his wife Marlene Hodge had gone to the area of the Flow Grounds to pick up their teenage children who attended a gospel concert at the Flow Grounds on 17th November, 2017 and so he parked adjacent the Flow Grounds but next to the Power Station chain link fence on the grass verge, with an undetermined portion of his vehicle in the road way and waited for the children. The grass verge is of an undetermined length from the chain link fence to the edge of the road where the deceased was parked. The width of the deceased vehicle is 5 feet.

- [16] Sometime after midnight on 18th November 2017 the gospel concert ended and their teenage children joined them in the vehicle which was still parked adjacent to the Flow Grounds on the side of the road closer to the Power Station and facing Basseterre.
- [17] With his family in the car, the deceased turned the ignition but the car did not start and so he got out of the car and sought the assistance of a number of persons to jump start his vehicle. Mr. Damian Warner, a Security Officer, would be the last person to try to assist with a power pack but was unsuccessful because he was interrupted by the collision.
- [18] It is while the deceased was standing in the road and to the front left of his vehicle with the hood up and his back to Basseterre and assisting a Damian Warner with fixing the battery, the collision occurred. Mr. Damian Warner was to the deceased immediate left, also standing in the road, and to Mr. Warner's left were Randy Tyson and Neysa Tyson who were on the grass verge closer to the Power station chain link fence. Marlene Hodge was in the front left passenger seat turning the ignition on instructions.
- [19] The collision traumatically amputated the deceased left leg at the level of the knee and multiple traumatic lesions and excoriations about the body. Mr. Hodge (deceased) was transported to the JNF Hospital where he underwent emergency surgery, but he succumbed to his injuries.
- [20] The defendant's vehicle was extensively damaged to the front left portion and the deceased's vehicle was extensively damaged on the front end and damage to the right rear end. Neysa Tyson's vehicle which was parked behind the deceased vehicle received damage to the front bumper.
- [21] The Crown and counsel for the defendant filed their sentencing guidelines and plea in mitigation, supported by authorities. The court was also provided with a social inquiry report in relation to the defendant, together with a victim impact statement from the wife and children of the deceased.

Aggravating and Mitigating Factors:

- [22] Counsel for the defendant submitted that the defendant's offending was aggravated by the fact that he drove in excess of the speed limit at the time of the collision. Counsel for the Crown submitted that the defendant's offending was also aggravated by the fact that serious injuries were caused to more than one person at the scene of the accident. Counsel for the defendant submitted that these injuries though requiring medical attention, did not result in the hospitalization of any of these persons and took issue with the Crown's analysis of these injuries as 'serious'. Counsel for the defendant accepted, as he was constrained to do, that the court was entitled to take the fact of those injuries into account as either going to the seriousness of the defendant's offending or as an aggravating factor.
- [23] However, counsel for the defendant submitted that the fact of these injuries would not suffice to move the defendant's offending into a more serious category of offending. In this regard, defence counsel prayed in aid the UK Sentencing Guidelines on Causing Death by Careless Driving (set out below) and submitted that the defendant's offending fell into the intermediate category.

Nature of Activity	Starting Point	Range
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Medium level community order	Low level community order – high level community order
Other cases of careless or inconsiderate driving	36 weeks custody	High level community order – 2 years' custody
Careless or inconsiderate driving falling not far short of dangerous driving	15 months custody	36 weeks – 3 years' custody

- [24] Counsel for the Crown submitted that the court was entitled to consider the fact of the injuries caused to multiple persons. In her considered view, it was immaterial whether it was treated as an aggravating factor or a factor going to the seriousness of the defendant's offending since the effect was the same.

[25] In this Court's view, the fact of injuries (headaches, neck, chest and stomach pains) to multiple persons is an aggravating factor. The list of aggravating factors set out in the UK guideline are not canon law and in this Court's view it is trite law that the fact that multiple persons are injured by the defendant's criminality aggravates, that is to say, renders the defendant's offending more serious than would otherwise be the case. Therefore, this Court finds that the defendant's offending is aggravated by:

- (i) The defendant's driving at the material time in excess of the speed limit and
- (ii) The fact that several persons were injured as a result of the collision.

[26] It was common ground between counsel for the crown and defence that the defendant's offending was mitigated by the following:

- (i) The defendant had no previous convictions for any offence and in particular had no road traffic convictions recorded against him in over 20 plus years of driving.
- (ii) The defendant had expressed remorse and evinced an intention to make recompense at a very early stage.
- (iii) The defendant was a man of good character. In this Court's view, it is entirely possible for a person to have no previous convictions and not be a person of good character. The social inquiry report detailed examples of the defendant's demonstrable good character and as such this Court is satisfied that the defendant is entitled to be considered as a man of good character.

[27] It is immediately apparent that the mitigating factors outweigh the aggravating factors albeit not overwhelmingly so. All the same, this is significant since a sentence at the lower end of the scale is warranted where the mitigating factors outweigh the factors of aggravation. This is even before the defendant is afforded any credit for his guilty plea.

Starting Point:

[28] Counsel for the crown and defence were agreed on the appropriate starting point. In their view, a starting point of 5 or 6 months imprisonment was warranted, having

regard to the aggravating and mitigating factors. Counsel for the defendant relied on the UK Sentencing Guideline for Causing Death by Careless or Inconsiderate Driving which posited a starting point of 36 weeks (9 months) imprisonment for the intermediate category of causing death by careless driving. In his view, when the UK's 5-year maximum for this offence was transposed into St Christopher, bearing in mind the 3-year maximum, a 5-month starting point was required. The Crown were of the view that a 6-month starting point was required and drew the court's attention to the fact that suspended sentences ranging from several months' to twelve months' imprisonment are imposed for this offence in the Federation.

- [29] It is a commonly held misconception that the maximum sentence is the starting point. As a matter of law, the maximum sentence is reserved for the hypothetical 'worst of the worst' category. This defendant's driving though deserving of criminal sanction and punishment does not fall into that category. This Court's starting point is its own subjective starting point having regard to its analysis of the aggravating and mitigating factors as set out above and relevant guidelines. In this Court's view, a 6-month starting point is unduly generous, particularly where there are two aggravating factors. In this Court's view, the aggravating factors leads this Court to a starting point of 12 months' imprisonment which when discounted by the application of the mitigating factors leads to a sentence of 8 months' imprisonment. The next issue for the consideration of this Court is whether that sentence of imprisonment should be an immediate one or whether it should be suspended.

Suspended Sentence:

- [30] In determining whether to suspend the sentence of 8 months' imprisonment, this Court is guided by the ECSC Practice Direction 8C which addresses the issue of when to impose a suspended sentence. In particular, the said Practice Direction posits the following questions (this Court's answers are italicized and underlined) which have to be considered:

- (a) Can appropriate punishment only be achieved by immediate custody? No. immediate custody is not warranted.
- (b) Does the offender present a risk or danger to the public or victim? No. The social inquiry report suggests that the defendant does not pose a threat to the public at large.
- (c) Has there been a history of poor compliance with court orders? This question does not arise for consideration.
- (d) Is there a realistic prospect of rehabilitation? Yes, having regard to the nature of the offence and the social inquiry report.
- (e) The defendant is over 21 so this question does not arise for consideration
- (f) There is no strong personal mitigation.
- (g) There is no evidence that an immediate custodial sentence will adversely affect the defendant's dependent relatives over and above the usual impact of a custodial sentence.

[31] The question of whether to suspend the sentence is a finely balanced one. The application of the criteria set out above, point towards suspension. In deciding whether immediate custody is warranted, this Court gives significant weight to the fact that the defendant does not pose a threat to the society, is a good candidate for rehabilitation and as such his immediate incarceration is not warranted as he can be appropriately punished without the need for immediate custody. It is important to note that a suspended sentence is a sentence of imprisonment, albeit one that is suspended for a period. It is not a lesser punishment and should not be considered as a non-custodial sentence as the sentence will hang over the defendant's head for the suspension period.

[32] Therefore, this Court is of the view that it would be appropriate to suspend this 8-month sentence of imprisonment for a period of 12 months. This Court draws support for its decision to suspend the sentence in this matter, from the sentences of 3 and 4 months imprisonment respectively imposed in SKBHCR 2018/0020 - **DPP v Valentine Parris** and SKBHCR 2018/0017 – **DPP v Nathan Chiverton**.

Time Spent in Custody:

- [33] It is trite law (see the Caribbean Court of Justice decision of Romeo Da Costa Hall) that the time spent in custody must be deducted from any sentence to be imposed. The defendant was in custody for 57 days or three days short of two months and I am prepared to round upwards and thus deduct two months from the sentence to be served by the defendant. The defendant's sentence will thus be reduced by two months from 8 months to 6 months.

Discount for Guilty Plea:

- [34] The general rule³ is that the maximum discount of 1/3 from the notional sentence is afforded to a defendant who pleads guilty at the earliest possible opportunity. The defendant had previously pleaded not guilty on October 4th, 2019 before Mr. Justice Ward and then sought a sentence indication from the judge on the same date. The judge was unable to give a sentence indication as there were factual issues which remained unresolved between the Crown and the Defence. As a result, there were further appearances on November 1st, 2019 and November 22nd, 2019 and the matter was adjourned for trial on January 13th, 2020.
- [35] Counsel for the defendant submitted that the defendant was entitled to the maximum discount as there were ongoing discussions between the Crown and the Defence and that the defendant always intended to take a particular course. Once the sentence indication was no longer viable, it was his submission that the defendant pleaded guilty on the first available opportunity, albeit on the date that the matter was set for trial on January 20th, 2020. The Crown submitted that the defendant

³ This being a rule of practice rather than a rule of law. See also the **EASTERN CARIBBEAN SUPREME COURT (SENTENCING GUIDELINES) RULES 2019 - PRACTICE DIRECTION 8A NO. 1 OF 2019 - GENERAL SENTENCING PRINCIPLES** provides that "an early guilty plea is in the public interest and should attract credit of one- third. It is the duty of defence counsel to tell an offender about this. In addition, an offender should be told it by the court on first appearance. A late plea of guilty will usually attract significantly less credit. Reasons must be given if the court decides to give no or reduced credit."

would only be entitled to a 10% discount as the plea of guilty to count 2 did not come until the date set for trial.

- [36] It is clear that counsel for the Crown and defence had previously discussed the course of action adopted on January 20th, 2020 and thus it would not be fair to characterize the defendant's plea as a late one. All the same, the defendant's guilty plea to causing death by careless driving would have come after his first appearance on October 4th, 2019.
- [37] It would have been open to the defendant then to have pleaded as he did before this Court on January 20th, 2020. The Crown would then have had to elect whether they were going to proceed to trial on causing death by dangerous driving in circumstances where the defendant had pleaded guilty to causing death by careless driving. Had the defendant pleaded guilty at that initial stage then there would be no argument that the full 1/3 discount would have been afforded to him.
- [38] The defendant's guilty plea, albeit before trial but after his initial appearance, thus entitles him to a 25% discount as opposed to the 33% discount that he would have received had he pleaded guilty at his initial appearance. In this Court's view, the defendant's plea was neither late nor at the earliest possible opportunity particularly when one considers the facts. There was no real dispute about the essential facts, that is to say that at the material time, the defendant drove a vehicle at an excessive speed which collided with a stationary vehicle causing the death of the deceased.
- [39] In this Court's view, the 10% discount should be reserved for the circumstances where the plea is truly late, at the door of the court, or on the eve of trial. The defendant's guilty plea was not so late that the credit should be substantially reduced and he should receive credit for the fact that his plea saved the Crown and their witnesses the burden and expense of trial. The defendant should also receive

credit for the fact that he and his counsel engaged with the Crown before January 20th, 2020 with a view to shortening the proceedings.

- [40] This Court is fortified in its decision to proffer the 25% discount by the UK Definitive Guideline on Reduction in Sentence for Guilty Plea which provides:

“The maximum level of reduction in sentence for a guilty plea is one-third

D1. Plea indicated at the first stage of the proceedings

Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made (subject to the exceptions in section F). The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.

D2. Plea indicated after the first stage of proceedings – maximum one quarter – sliding scale of reduction thereafter

After the first stage of the proceedings the maximum level of reduction is one-quarter (subject to the exceptions in section F).

The reduction should be decreased from one-quarter to a maximum of one-tenth on the first day of trial having regard to the time when the guilty plea is first indicated to the court relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial.”

- [41] It is accepted that the UK Guideline does not have the force of law in the Federation of Saint Christopher and Nevis and only provides guidance to the court. All the same, the UK Guideline appears largely consistent with the common law approach as developed by case law⁴ and thus provides instructive guidance to the court. It is important to note that in the United Kingdom, the discount for the guilty plea is enshrined in statute; see section 144(1) of the Criminal Justice Act 2003. The Eastern Caribbean Supreme Court Practice Direction No. 1 of 2015 – Early Guilty Plea Scheme does not appear to apply to the Federation of Saint Christopher and

⁴ See Buffery (1993) Cr.App.R (S) 511

Nevis. Moreover, Practice Direction 8A – No. 1 of 2019 – General - Sentencing Principles mentions the terms ‘early guilty plea’ and ‘late guilty plea’ but does not define these terms. It is thus left to the sentencing judge to determine where on the spectrum the defendant’s plea falls.

- [42] The UK Guideline is not absolute and the following exception to the general rule is set out below:

“F1. Further information, assistance or advice necessary before indicating plea

Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant’s ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.”

- [43] In this Court’s view, the exception to the general rule does not apply. There were no particular circumstances which would have made it unreasonable for the defendant to indicate a guilty plea sooner than he did. The defendant’s guilty plea was neither early nor late and as such while he cannot benefit from the maximum discount he would be entitled to a significant discount in view of the fact and timing of his guilty plea. It is for this reason the 25% discount from the notional sentence is proffered.
- [44] A 25% discount from the sentence of 6 months imprisonment means that the defendant’s sentence is further reduced by 1 and a half months to 4 and half months imprisonment.

Suspension from Driving:

- [44] It was a condition of the defendant's bail that he be prohibited from driving in St Christopher and Nevis and as such the defendant has not driven a motor vehicle since January 11th, 2018. This is a significant period and a further period of suspension from driving until January 11th, 2021 is entirely appropriate and consistent with the 3-year suspension from driving imposed in the **Nathan Chiverton** matter referred to above.

Fine:

- [45] This Court is minded to impose a fine in conjunction with a suspended sentence of imprisonment. The case of **R v Leigh** (1970) 54 Cr. App. R. 169 is authority for the proposition that a sentencing court can impose a suspended sentence and a fine. In **Leigh** the UK Court of Appeal was of the view that in certain circumstances it would be appropriate to impose a fine in addition to suspension if it was necessary in order to emphasize the gravity of the offence. The taking of a life is a grave offence and as such a fine of EC \$15,000.00 in combination with a sentence of 4 and a half months' imprisonment suspended for 12 months is entirely appropriate. The fine is to be paid within 6 months of the date of this judgment, that is to say, on or before December 16th, 2020 failing which the defendant will serve a term of 12 months' imprisonment in default of payment.

- [46] The defendant is therefore sentenced as follows:

- (I) To pay a fine of EC\$15,000.00 on or before December 15th, 2020. In default of payment the defendant is to serve a 12-month term of imprisonment.
- (II) The defendant is suspended from driving or operating a motor vehicle until January 11th, 2021.

- (III) The defendant is sentenced to serve a term of imprisonment of 4 and a half months, such term, suspended for 12 months from the 16th day of June 2020.

Patrick Thompson Jr.
High Court Judge (Ag.)

BY THE COURT

REGISTRAR