

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE ANUHCR 2019/0025

REGINA

V

REGINO NICHOLAS

APPEARANCES

Mr Curtis Cornelius for the Crown.

Mr Lawrence Daniel for the defendant.

2019: DECEMBER 6

SENTENCE

For causing death by dangerous driving

- 1 **Morley J:** The defendant Regino Nicholas aged 24 (dob 07.07.95) falls to be sentenced for causing the death on 07.08.17 by dangerous driving of Jadiane Spencer, aged 3 (dob 23.02.14), to which he pleaded guilty on 27.09.19 at the first practical opportunity, and about which there was a two hour sentencing hearing on 28.11.19, leading to a need for written remarks, which are these.
- 2 On 07.08.17, near Turner's beach, on the main road in the vicinity of Johnson's Point, at around 3pm, in daylight, following rain, Jadiane was in the arms of her mother Honora Thomas 31, who was walking with her back to oncoming traffic, with her aunt Carol Richards 45, and

- relatives Leanna Brown 8, and Keandra Sylvester 6, all in single file on the road. Nicholas was in a white Toyota Corolla A43607, which hit a pothole, he lost control, and he struck Honora catapulting her over his car, and striking Carol, shunting her left. Leanna and Keandra leapt out of the way, and Leanna cut her knee. Jadiane was thrown onto the car and catapulted into bushes, where she died from a broken neck. Honora suffered severe injuries to her left arm and leg, broken knees, and multiple lacerations. Carol suffered multiple lacerations, a broken neck at C5 and C6, her right patella was torn off her leg, and her right femur was completely transversed, which are injuries for which she requires further surgery.
- 3 Nicholas hurt his foot, and raised the alarm at the police station. He expressed deep remorse, and said to police he had been driving for four years, having no convictions, the rain had filled the pothole causing him not to see it, his steering wheel had 'locked' in it, and he had not been driving faster than 45kmh, so that the collision was the fault of the rain hiding the pothole. He said one had gone over the car. Vehicle expert Lancelot James examined the Corolla, its left bumper and bonnet being damaged and windscreen smashed, and he concluded it had been speeding, adding the steering could not have locked because the pothole was not deep enough and the car had ended up steered to the right side of the road.
- 4 It is clear on the expert evidence, in combination with the colossal injuries inflicted on three people - Honora, Carol and Jadiane - Nicholas had been driving far faster than he admits and on hitting the pothole, he lost control of the car, veering to the left, into the pedestrians, and then corrected so that the car shot to the right. If he had been going slower he would likely have been able to avoid them as they must have been highly visible in daylight, or at least the injuries would likely have been lesser and to fewer. His dangerous driving hit three people, and would have hit five in a line had the children not leapt.
- 5 Folk on Antigua know the state of the roads, and that there are potholes and pedestrians. We all know how important it is to keep to low speed to keep control in case of bad road surface. In **R v Ruan Roberts et al 2018**¹ this court said:

¹ Case ANUHCR2016/0148

- 2 '...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.
- 3 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.
- 4 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.
- 5 It is important for drivers to understand that these features do not make collisions the fault of government. Every road user is responsible to every other, in full knowledge the conditions are tricky. And in this knowledge drivers must adapt to ensure they drive safely...
- 6 By his plea, rightly, Nicholas has accepted he was grossly irresponsible behind the wheel, meaning that the standard of his driving fell far below the standard of the prudent driver so as to create an obvious risk of serious injury. He was speeding, hit a pothole, and careered in daylight into two women with three children.
- 7 Concerning the hearing on 28.11.19, there was considerable emotion.
 - a. Jadiane's whole family expressed heartbreak at the loss of Jadiane and the terrible life changing injuries inflicted on Honora and Carol. Civil litigation is afoot against Nicholas' insurance, with interim payment having been made, and much litigation still to follow for

medical expenses, future surgeries, and pain and suffering, all while no amount of money will bring back the joy of Jadiane to her family. The court heard evidence from: Honora, visibly limping, who said Jadiane was her only child, her 'little happy girl', who would light up a room and loved the beach; Carol, visibly limping, who told of her profound anger at what Nicholas had done to her and her family; Lydia Hunt, Jadiane's grandma, who said Jadiane had uniquely been born in her home, was 'the centre of our life', how she had had to identify the body, and how Honora was not coping but hiding her pain; Norma Richards, Jadiane's great aunt, who told of how she had been in the ambulance praying while paramedics hopelessly tried to revive Jadiane in the knitted swimsuit she had made for her; and Sylvester Spencer, Jadiane's father who described the horror of watching the hospital try to revive Jadiane, and then stop.

- b. Turning to the defence: Nicholas gave compelling evidence of his contrition and spoke directly to the family to express his sorrow, begging for forgiveness, explaining the stress of what he had done and hostility from the community had caused him to faint in St Johns, severely cutting his head; Janice Nicholas, his mother, expressed her sorrow to the family, and how she had tried to reach out to Honora and Carol, visiting the hospital, as they are all related, but had been rebuffed; and Rennse Nicholas, who spoke movingly and in tears in defence of his brother, explaining he is usually a responsible and careful driver, how some said his brother should kill himself, and while he will always stand by his brother he wondered aloud at the difficult job a judge has where no words can ever soothe the pain of the loss and injury caused.

8 In the pre-sentence report of 26.11.19, Probation Officer Desiree Williams noted how Nicholas was polite, courteous, easy-going, jovial, energetic, and ambitious, visibly upset in interview when discussing what he had done, had been depressed, left school with 8 CXC's, and was described by his employers as reserved, smart and efficient, and easy-going, being a peace-maker at work at Curtain Bluff Hotel and a reliable member of the Urlings football club.

9 Plainly, to have caused this terrible event is out of character for Nicholas; but then such is often the case concerning killing behind the wheel.

Constructing the sentence

10 The maximum sentence is five years. As was said in *Ruan Roberts supra*:

9 ‘...On Antigua and Barbuda, the maximum sentence for ‘causing death by dangerous driving’² is only five years, set as long ago as 1947, which it might be thought is nowadays increasingly out of step with other Commonwealth countries, where the maximum is higher: for example, in the UK it is 14 years, in Canada 14 years, in South Australia 15 years, in Kenya 10 years, in Malaysia 10 years, in Guyana 10 years, and in Trinidad and Tobago is 15 years. It may be that the legislature will wish to increase the maximum here.

10 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....

23 In assessing the starting point for an offence of causing death by dangerous driving I have chosen to be assisted by the approach taken by the UK sentencing guidelines³, suitably discounted for the difference in maxima, where the maximum on Antigua is about one-third what it is in the UK.

24 These guidelines are particularly helpful in identifying features of seriousness, categorizing it into three levels: level 1 is where the driving involved a deliberate decision to ignore, or a *flagrant disregard* for, the rules of the road and an apparent disregard for the great danger being caused to others; level 2, where the driving created a *substantial* risk of danger; and level 3, where the driving created a *significant* risk of danger.

25 Strong features in mitigation will always be an early plea and evident remorse.’

11 Considering the circumstances of the offence, I assess this case to be at level 2, namely that driving at speed, such that on entering a pothole, which is a predictable event on Antigua, the car lost such degree of control it careered into five, hitting three, carrying two over the bonnet,

² Contrary to s57 **Vehicle and Road Traffic Act** cap 460, of the revised edition in 1992 of the laws of Antigua and Barbuda, being first enacted in 1947.

³ See para SG 427 on page 546 in the supplement to **Blackstones 2016**.

- is driving that creates a *substantial risk of danger*, obvious to a prudent motorist, of serious injury to pedestrians or others on the road. As such to kill one person would incur a starting point of 2 years, which is aggravated here by hitting three persons, almost five, increasing the starting point to 3.5 years, or 42 months.
- 12 Turning to the circumstances of the offender, considering Nicholas has no previous convictions, and his distressingly palpable remorse, I reduce the sentence by 15 months to 27 months.
- 13 Turning to credit for plea at the earliest opportunity this attracts the usual discount of one-third, reducing the sentence to 18 months.
- 14 The question arises whether I can properly suspend the sentence. Having given this careful thought, I cannot. Only immediate custody is appropriate in this case: first to mark the fact in broad daylight he hit three pedestrians, and almost two others who were children; and second, for deterrence, to make it known to the public, that speeding on Antigua leading to such awful tragedy will be met with jail, being wholly avoidable if folk would kindly drive more considerately.
- 15 Time on remand (being 9 days) shall count.
- 16 As civil litigation is ongoing concerning insurance, I will make no separate order for compensation. However, I order the car confiscated, as an item used in a crime (if Nicholas still has it).
- 17 *Regino Nicholas, please stand up.* You were driving too fast, hit a pothole, and careered in daylight into three highly visible people, severely injuring two adults and killing a child. For the reasons I have explained, the sentence for causing the death of Jadiane Spencer, aged 3, on 07.08.17 by dangerous driving near Johnsons Point, following your plea of guilty, shall be 18 months imprisonment. Many in the wider Commonwealth might say the sentence is not long enough, but the court is constrained by a maximum of five years here on Antigua. Time on

remand shall count. You shall be eligible for release after serving two-thirds if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

6 December 2019