

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR2016/0148 & ANUHCR2017/0054

REGINA

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V

V

RUAN ROBERTS

CALEELE THOMAS

APPEARANCES

Mr Adlai Smith for the Crown.

Mr John Fuller for Roberts.

Mr Michael Archibald for Thomas.

2018: APRIL 27

SENTENCES

For causing death by dangerous driving

- 1 **Morley J:** Ruan Roberts and Caleele Thomas each face sentence for separate offences of causing death by dangerous driving, and have been conjoined so that the court may express some guidance on how to approach such sentencing.

The public interest

- 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. Antigua is on show to the world, as a beautiful world-class luxury tourist destination, attracting each year tens of thousands from far away, and her economy expects and requires that folk shall visit, which is of enormous benefit to all Antiguan, meaning visitors, as well as local citizens, can and should expect considerate driving.

Improving safety

- 6 In mitigation by Counsel Archibald I have been told at length that on Antigua when learning to drive and being tested, learners are not taught braking distances, safe braking, defensive driving, use of seatbelts, consideration for other road users, that the driving test is outdated, and in particular that youngsters need to be taught the forces at work in a car, perhaps by

having to watch crash videos, so that they understand a car is potentially lethal. If this is true, then the government may wish to consider if an upgrade to what is taught and to making the test more rigorous may be needed to make drivers safer.

- 7 As an overview, it seems to this court that there can be on Antigua five immediate improvements to road safety.
 - a. Drivers should remember that the speed limit is 20mph in built up areas and 40mph elsewhere, which the authorities within reason should enforce.
 - b. Drivers should be careful, and defensive, using seatbelts, thinking on what might go wrong, and what danger might another driver create, rather than driving too quickly ignoring risk.
 - c. Mini-busses should cease stopping for passengers at junctions, and on bends and the brow of hills, so that overtaking the bus becomes more complicated as line of sight to other vehicles is obscured, with the attendant risk that alighting passengers, or those trying to catch the bus, often children, dart out into the road in front of cars coming from different points of the junction or from somewhere out of sight.
 - d. Passengers in trucks, if in the bin (only if permitted by insurance), should be seated within rather than standing or seated on the edge, more apt to fall out to injury or into oncoming traffic if there is sudden movement or braking.
 - e. If walking in the road, pedestrians should walk on the right toward oncoming traffic so they can watch it approach and take avoiding action, rather than on the left with traffic coming unseen behind them, and at night should not if possible be in wholly dark clothing.
- 8 In light of the number of deaths by dangerous driving on Antigua, which seems high for so small a population (noting I have two more cases on my docket, and last year did three which pleaded), the Commissioner of Police may wish to consider mounting a public awareness campaign to encourage safer road use, at schools, on the radio and tv, and with posters, and might begin by seeking to encourage the five improvements, and where necessary, if legally permissible, enforce them with a campaign of stopping and admonishing poorly driven vehicles, possibly supported by the issue of on the spot fines, like for parking violations.

The legal framework

- 9 On Antigua and Barbuda, the maximum sentence for ‘causing death by dangerous driving’¹ 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.

Ruan Roberts

- 11 On 19.07.15, shortly after 10pm, in darkness, Ruan Roberts (dob 17.05.90), then 25, was driving his girlfriend Malika Waldron home in his Toyota Corolla A27369 from Urlings to Bolans along the Valley Road where the speed limit is 40mph. It had been raining. Walking on the left, in dark clothing with her back to Roberts, was Teresa Cummins, (dob 25.08.61), then 53, a tourist from the UK, who had arrived on island earlier that day to join her daughter Louise for a holiday in Jolly Harbour. Teresa was behind her daughter and two others, on and off the edge of the road, returning home from Valley Church beach where she had been to a fete and had been drinking moderately. Her party was in a line of others walking from the fete, and Roberts admitted he was aware of earlier pedestrians as he drove. Tragically, Roberts struck Teresa from behind without braking, catapulting her high over the three in front and to the side of the road, shattering her skull, so that she was pronounced dead at the scene. At the point of impact, the street lighting was broken, so that the road was in almost total darkness.
- 12 Roberts was convicted after a trial, during 12-20.12.17, which considered much evidence, in light of which I make the following findings of fact about which I am sure.

¹ 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.

- a. Roberts' car had slightly faulty brakes and an illegal front window tint which was too dark and too low, meaning it was not in a safe condition to drive at night in the wet.
 - b. He was driving in excess of 40mph, as evidenced by the colossal skull injuries, by impact damage to the windscreen, bonnet and nearside front light, and by how he scooped Teresa high above and ahead of her companions rather than simply shunting her to the side.
 - c. He pulled at speed a touch to the left because there was an oncoming car with high beam, which is why he collided with Teresa on the road edge.
 - d. He did not see her until he was at the point of impact, and even then was not sure what he had struck, having only seen feet, leading to him stopping a short distance down the road, not having braked sharply at or after impact.
 - e. The reason he did not brake was because he suffers from 'the bends', as a fisherman diver, whose legs are permanently partially numb, meaning he could not move his right foot speedily from the accelerator to brake like other motorists.
 - f. In combination, the state of his car and legs, and his speed, meant that it was obvious to the competent and careful driver that Robert's driving fell far below the standard expected, as an objective test, even though I find to his benefit that he did not in his own mind subjectively realise this.
- 13 In my judgement, the gravamen of the offence was that he knows the road, and that it is very dark without a pavement and folk often walk on it, he had in fact seen others on the road moments earlier, so that it should be obvious to him he should have been driving slower, and he should have slowed and braked on seeing the oncoming high beam, rather than dipped left while travelling in excess of the speed limit.
- 14 From the pre-sentence report filed on 25.04.18 by Denfield Phillip, it is clear Roberts is remorseful, wishing to offer compensation and apology to Teresa's family, having burst into tears at the scene when he realized what he had done. He is the father of two children, now 27, does not drink or smoke, is well-thought of within the fisherman community, and is soft-spoken and polite.

- 15 The victim impact statements on email from Teresa's daughter Louise and friend Sue Allen make tragic reading, describing how 'incredibly hard' it has been to adjust to the suddenness of her loss, how it has been 'beyond comprehension', and I note in addition Teresa was a teacher much missed now by her students.
- 16 Though of good character, Roberts does not have credit for a plea.

Caleele Thomas

- 17 On 04.09.15 at 2pm, Caleele Thomas (dob 05.05.95), then 20, hired from Melissa Hewlett a silver Toyota Vista R2522. Shakeel Roberts (dob 02.09.95), then 20, a friend, sat in the front passenger seat as Thomas drove from Heritage Quay to the Halcyon Hotel. He had only got his driving license three weeks before. In the back was another friend Tassim Christian (dob 15.11.96), then 18. En route, in daylight, Thomas drove far too fast. None wore seatbelts. The speed limit was 40mph. Tassim saw the speedometer reading at 103kph (64mph) and told him to slow down. He did not. Nonchalantly, at this terrifying speed on the uneven road surface of Anchorage Road, he used only one hand on the wheel. He was showing off. Shakeel also told him to slow down, exclaiming what are you doing, by saying '*yo, what you ah deal with boss*'. Inevitably, he then lost control of the car, it drifted to gravel, wobbled, he overcompensated, braking hard, the wheels locked, and the car broadsided into a lamppost. The base of Shakeel's skull was multiply shattered and he later died in hospital. At the scene, Tassim directly challenged Thomas, saying '*boy, a stupidity you do*'.
- 18 In reverse to Roberts, while Thomas pleaded guilty at the first practicable opportunity, on 09.02.18, and so attracts full credit for plea, he does not have the advantage of good character, having three offences of dishonesty since 2016, including having been imprisoned for two years by Chief Magistrate Walsh on 17.05.16 for burglary. Specifically, he was on bail for 'attempted house breaking' and 'house breaking' at the time he killed Shakeel. Moreover, shortly after release from the two year sentence, he forged a document to get money, for which on 20.10.17 he received three years' probation, which is still active.

- 19 In the pre-sentence report dated 12.04.18, prepared by Denfield Phillip, it is particularly striking how sorry Thomas is for what he has done, how helpful he was in interview, and the writer expressed the thought that *'willingness to rehabilitation lies in the heart of the defendant'*².
- 20 However, in the victim impact report offered by Denfield Phillip, on 26.04.18, it is noticeable that both Stacy and Lashorn, Shakeel's siblings, have struggled to cope with their loss, tears streaming down the face of Stacy when interviewed, with bewilderment by both that Thomas has never apologized or, sending a note or through his family, expressed condolences. Moreover, I have seen with my own eyes in court his mother, in audible floods of tears before me in the public gallery.

Sentencing overview

- 21 Alongside each other, these two offenders differ in that: while Roberts, who is generally hard-working and law-abiding, genuinely felt his driving was not dangerous and Teresa's dark clothing and the oncoming high beam were most to blame for the collision; Thomas on the other hand, though he pleaded, was feckless in driving one-handed way to fast, mirroring it seems the fecklessness of his thievery.
- 22 I have been assisted by a review of various sentencing authorities within the jurisdiction of the Eastern Caribbean Supreme Court (ECSC), including: **R v Caleb Antoine 2016** St Lucia SLUCRD 2014/0026A 0077A; **DPP v Elvis Richardson 2013** St Kitts & Nevis SKBHCR 2013/0030; **DPP v Kimo Liburd 2013** S St Kitts & Nevis KBHCR 2013/0025; **R v Romould Clarke 2012** St Lucia SLUCRD 2011/0021; **R v Wendell Varlack 2012** British Virgin Islands no.27 of 2011; **R v Jesse Charles 2011** St Lucia SLUCRD 2008/0009; and **Thelbert Edwards v R 2007** St Lucia appeal no. 3 of 2006. 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, (though **DPP v Elvis Richardson 2013** supra was an example of 9 months despite an early plea).
- 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

² See page 9 of the report.

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.

Constructing the sentence – Ruan Roberts

26 I consider Roberts' offence to be at 'level 3', the lowest level. This is because while I weigh that he was driving objectively too fast in a vehicle with defective visibility and brakes, his numb right foot unable to brake suddenly, on a road he knew was in darkness with the possibility of pedestrians, and he should have slowed in the face of the oncoming high beam, I also weigh that Teresa tragically was in dark clothing, difficult to see, and not walking toward the traffic. In these circumstances I consider the danger was significant, not substantial or flagrant. Discounting two-thirds for the difference in maxima, to my mind this means a starting point of one year.

27 I consider his good character mitigates the sentence by two months reducing it to ten months.

28 There is further mitigation available in that in February 2018, Roberts personally rescued three fishermen, aged 27, 30, and 42, in pitch darkness, when their boat sank five miles out in big swells. He had been called on his phone to be alerted to the disaster, and went out into the dangers to save three souls. This is commendable behavior and merits a further reduction of two months, to eight months.

29 There is one further discount to add. Roberts should have been sentenced on 26.01.18, but there was no pre-sentence report, which has only today been filed, and has therefore had his sentence delayed by three months, being back to court on three further occasions, through no

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

- fault of his own. I observe him to be a sensitive and thoughtful man, so that I consider awaiting his sentence will have been a hideous strain, meaning that I will reduce his sentence by a further two months, to six months.
- 30 There is no credit available for plea, as Roberts chose to be tried.
- 31 The question now arises whether to impose immediate custody, or whether to suspend the sentence of six months.
- 32 A suspended sentence of imprisonment is still a sentence of imprisonment. Suspension is not a leniency; it is instead a discretionary staying of the hand of punishment.
- 33 The test in England & Wales for passing a suspended sentence is governed by **s189 Criminal Justice Act 2003**, requiring that I assess: does the offender present a danger to the public, can appropriate punishment only be achieved by immediate custody, and has there been a history of poor compliance with court orders; while factors which indicate that it may be appropriate to suspend a custodial sentence are whether there is a realistic prospect of rehabilitation and strong personal mitigation.
- 34 I do not consider Roberts presents a danger to the public, there has been no history of poor compliance and there is a realistic prospect of rehabilitation. However, I note the disapproval of suspension in the ECSC authorities where there has not been a plea, I do not consider there is uniquely strong personal mitigation, (other than that he has a physical condition in 'the bends' causing numbness which may make being in jail in part challenging, though not impossible), and so I focus now on whether appropriate punishment can only be achieved by immediate custody.
- 35 Weighing matters, the court cannot forget that a person has died. The consequence to Roberts' dangerous driving cannot be more serious. For this reason, there having been no plea, it is with regret that I consider, notwithstanding his courteous quiet-spoken manners, appropriate punishment can only be achieved by immediate custody.
- 36 Any time spent on remand will count.

- 37 As to his driving license, I am told it was suspended from 19.07.15, so that he has not been able to drive for almost three years. I order he is to be disqualified for a total of five years from the date of the offence, being 19.07.15, and insofar as I am able, I direct that before his license is returned to him so that he can drive again, he must re-sit a driving test, so that the examiner can assess whether he is capable of driving safely, notwithstanding 'the bends' and his numb lower limbs, before passing him.
- 38 As to compensation, he is a man of no means, and so I order none, knowing no monies can ever replace someone lost, and expecting that there will have been, or should be, a separate claim on at least the driving insurance.
- 39 I am conscious that Teresa's family are in the UK, where in my experience Roberts would receive a longer sentence as the offence attracts a much longer maximum, which the court appreciates may mean the family may today feel unhappy with the outcome. On the other hand, I can say that had Roberts pleaded guilty, in light of his good character I would have suspended his sentence, which the court appreciates may mean he may well also today feel unhappy with the outcome, but from the opposite view. In the round, sentences for causing death by dangerous driving are always difficult for the court to assess fairly, within the law, and often difficult for either party to accept at all.

Constructing the sentence – Caleele Thomas

- 40 Turning to Thomas, though Roberts' culpability was placed at level 3, in sharp contrast I consider Thomas' offence to be at level 1, the highest, as he was driving far too fast at 64mph, must have known it, being more than 50% above the speed limit, with only one hand on the wheel, showing off, disregarding his friends saying he should slow down, being a deliberate decision to disregard the rules of the road. Allowing for the difference in maxima, I assess the starting point to be 3 years, which is 36 months.
- 41 In mitigation, he is one of 15 children, a young man, now 22, and I am told a father.
- 42 I take the point urged upon me by Counsel Archibald that he had not been well-educated in how to drive, passing an over-easy test, only three weeks earlier, evident by the stupid speed

he did with only one hand on the wheel. Moreover, he had not been taught that if on gravel, braking will likely lock the wheels and cause the car to broadside. To my mind, this poor driving education merits a reduction of twelve months.

43 Further, Shakeel was his good friend, and he must live with what he did, and though he expresses remorse, noticeable in the pre-sentence report, I note there was no striking effort to offer apology to the family. I also take into account that he too has had to await his sentence, as the victim impact statement was delayed from 13.04.18, and overnight last night as I deliberated. In combination, these observations merit a further reduction of six months.

44 Taking all these mitigating features into account, the sentence can be reduced, perhaps too generously, by 18 months to 18 months.

45 The early plea leads to the full discount of one-third, meaning of six months, further reducing it to twelve months imprisonment.

46 The question now arises whether to suspend the sentence. I remind myself that Thomas pleaded guilty, which in other ECSC cases has often led to suspension. However, after much reflection, I will not suspend, because Thomas has relevant previous convictions, and specifically was on bail when he killed Shakeel. These convictions are relevant because they disclose an irresponsible attitude to society, in the same way does his dangerous driving. I remind myself there are three, for dishonesty, where one led to two years imprisonment, so that I am not satisfied he really is poised to be rehabilitated, notwithstanding the well-intentioned thoughts of probation officer Phillip. Moreover, I do see a history of poor compliance in that he has been a repeat offender, and he can be thought a public danger as having an irresponsible attitude to being law-abiding. Moreover, his behavior that day, against a background of generally poor behavior, has taken a life - someone died, the consequence cannot be more serious - and in all these circumstances the only appropriate punishment is custody.

47 As to the probation order passed on 20.10.17, I do not rescind it, but instead insofar as I am able, I suspend it during this prison term, so that on his release he will return to that order, to

continue it until its end in October 2020. Hopefully, it will help to support Thomas from further offending when out. The probation order was passed by Mr Justice Thom, and I anticipate the Learned Judge will want to oversee its completion.

48 As to his driving license, I am told it was suspended from 04.09.15, so that he has not been able to drive for almost three years. I order he is to be disqualified from driving for a total of ten years, for the date of the offence, being 04.09.15, and insofar as I am able, I direct that before his license is returned to him, he must re-sit a driving test, so that the examiner can assess whether he is capable of driving safely, noting he had passed his test just three weeks before he caused a fatality, begging whether he should have passed in the first place.

49 As to compensation, he is a man of no means, and so I order none, knowing no monies can ever replace someone lost, and expecting that there should be a separate claim on the car's insurance, through the hire company 'Melissa's car rental'.

Finally

50 In mitigating, counsel have both said that no cases in a long time on Antigua have resulted in a jail term for causing death by dangerous driving, suggesting this has been the norm for at least 19 years, whether on a plea or after a trial. I sense mild shock among counsel that I have imposed jail terms. It is hoped these observations will help provide some guidance, and to sharpen the mind of counsel and of the public, that these are serious offences.

51 To have any hope of avoiding custody, persons guilty of causing death by dangerous driving, who are of good character, or with non-relevant convictions, may wish to demonstrate palpable remorse and offer a plea at the first practicable opportunity.

52 *Ruan Roberts, please stand up.* For the offence of causing the death of Teresa Cummins by dangerous driving, in level 3, driving so as to create a significant risk of danger, for the reasons I have explained, it is with regret that the sentence of this court must be six months imprisonment. Time spent on remand, if any, will count. You will be eligible for remission of up to one-third. In addition, you will be disqualified from driving for five years, from the date of the

offence, being 19.07.15, and insofar as I am able to order it, you are not to get back your license to drive until you have passed your driving test once again. You may go down.

- 53 *Caleele Thomas, please stand up.* For the offence of causing the death of Shakeel Roberts by dangerous driving, in level 1, driving so as to be in flagrant disregard for the rules of the road, ignoring demands that you slow down from your two passengers, for the reasons I have explained, the sentence of this court is 12 months imprisonment. Time spent on remand, if any, will count. You will be eligible for remission of up to one-third. In addition, you will be disqualified from driving for ten years, from the date of the offence, being 04.09.15, and insofar as I am able to order it, you are not to get back your license to drive until you have passed your driving test once again. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

27 April 2018