

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN THE COMMONWEALTH OF DOMINICA

[Criminal]

CASE NO. 21/2015

BETWEEN:

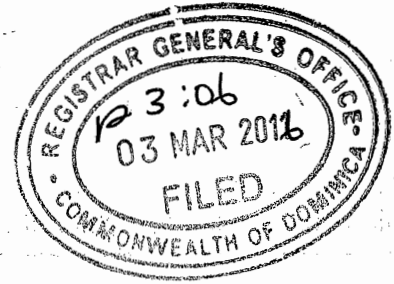
THE STATE

Claimant

V

LAYNE ORLANDO ROYER

Defendant



Appearances:

Ms. Evelina Baptiste, Director of Public Prosecutions for the Claimant

Mr. Kondwani Williams for the Defendant

2016: February 19th

JUDGMENT ON SENTENCING

- [1] **THOMAS, J. [Ag.]:** Layne Orlando Royer of Sibouli, Massacre, was on 2nd February 2016 found guilty, by unanimous verdict, of dangerous driving under section 51 (1) of the **Vehicle and Road Traffic Act¹, 1993**. This triggered the fixing of a date for sentencing which is today. At that time also, the court ordered a Social Inquiry Report to be prepared by a Social Welfare Officer of the Welfare Department.

Relevant considerations

- [2] It is well established that in arriving at a just and appropriate sentence, the court must address certain relevant considerations. These are as follows: the nature of the offence, background to the offence, the manner of execution, the maximum penalty under the law for the offence, the social standing of the defendant, prior convictions, if any, the ages of the victim and the defendant, the principles of sentencing, the aggravating factors, the mitigating factors, the Social Inquiry Report and the plea in mitigation.

¹ Act No. 17 of 1993

Nature of the offence

- [3] In plain terms the purpose or objective of the **Vehicle and Road Traffic Act**. ("The Act") is to regulate many aspects of the driving of vehicles on public roads in Dominica. As such, section 51 (1) of the Act creates the offence of reckless or dangerous driving.

Background to the offence

- [4] The defendant in his unsworn statement said that he left work on the evening of 10th August 2012. He said further that when he left work at the Douglas Charles Airport (then the Melville Hall Airport) he made contact with his close friend and they decided to lime for a while.
- [5] The defendant also made mention of contact with his girlfriend concerning the picking up of his two boys. In the end, he said, they decided to leave that until the following day.
- [6] In terms of the social contact with his friend, the defendant said that it ended at about 5 a.m. and he decided to make his way home. He also spoke of stopping to buy black pudding, then dropping his friend in Massacre and then headed to Loubiere to pick up his two boys. Critically, he said he was "not in any particular hurry as I knew the boys would not be up until about 8 o'clock".
- [7] The subsequent entry on the Goodwill Road proved otherwise as the defendant struck the deceased with his vehicle while heading south and driving in an incorrect lane which goes north. The deceased at the time, in seeking to cross the road and was heading to the sea wall on the seaside of the said road.
- [8] The deceased died on the spot after being thrown in the air over 30 ft, landing 91 feet from the point of impact and rolling over three or four times before he came to rest. One witness described the scene graphically as the deceased floating like a balloon after he was hit.

Manner of execution

- [9] Despite what the defendant said about not being in any particular hurry, and being on "an eventful drive", he ran into difficulty near Ma Boyd's Bar when he encountered some difficulty with a white vehicle which appeared to be giving him way and then, according to the defendant, "suddenly drifted towards me".
- [10] The defendant continued his unsworn testimony in this way:
- "When I turned back to the road the light pole was dead in front of me so I knew I could not turn to the right so I swung around the pole. As I crossed the pole I heard "bax" a loud cracking sound so I froze up for a while."
- [11] He went on to say that he saw the windscreen of his vehicle was cracked.

- [12] In contrast to the defendant's version, witnesses gave varying versions of the defendant's action at the material time. One witness, Emelie Cuffy, gave this testimony:

"I heard a noise coming with full fire. It was coming towards Roseau section. Alie had just pass and going to work. As Alie was crossing the street to under the almond tree the jeep that was coming fast come and pick up Alie. It passed by Ma Boyd's Bar. It is on the right side by the almond tree.
The jeep crossed the yellow line and go on the other side by Ma Boyd's Bar. The transport had so much speed so it could not slow down."

- [13] Anthony Alexis also gave evidence in part as follows:

"While we were talking I heard a noise. I saw a body on the windscreen going up in the air. It was the windscreen of the dark vehicle. The dark vehicle was going fast going to town. The dark vehicle was on the other side of the road facing the bay side. When Alie was in the air he landed on the road."

Maximum penalty under the law

- [14] The maximum penalty under the law is imprisonment for ten years.

Prior convictions, if any

- [15] The defendant has no prior convictions.

The ages of the victim and the defendant

- [16] The defendant is 34 years old, while the deceased died at the age of 40.

Principles of sentencing

- [17] The well-established principles of sentencing are: deterrence, society's retribution, reformation and protection.
- [18] These principles emerged from the English case of **R v Sargeant**² per Lord Justice Lawton and were expanded upon by Byron CJ in the case of **Desmond Baptiste v R**³. These principles will be placed in the context of the law and the Dominican society.

The aggravating factors

- [19] The aggravating factors are these:
1. The evidence of the speed of the defendant's vehicle in context of the condition of the road being either moist or wet.
 2. The victim being hit on the lane of the road going north, when the defendant was heading south

² [197] 60 Crim Appeal R74

³ Criminal Appeal No. 8 of 2003

3. The location and use of the Goodwill Road given the nature of the defendant's job and then being stationed at the Douglas Charles Airport.
4. The distance the victim landed, being 91 feet from the point of impact.
5. The distance the defendant stopped his vehicle after the impact, being 425 feet.
6. The nature of the injuries suffered by the deceased.

Mitigating factors

- [19] There are no mitigating factors arising directly from the evidence; but learned counsel for the defendant has advanced the following which the court accepts: the defendant's age, being the father of two young boys whom he supports; the defendant's good character, the defendant's involvement in the society, being a productive individual and difficulties he is likely to encounter with the loss of his job as a customs officer.

Social Inquiry Report

- [20] The Social Inquiry Report went the usual course of inquiry but the court considers that it even went beyond the norm in terms of interviews and analysis.
- [21] The report covered family history, interview with the defendant, school goal and ambition, the defendant's attitude to the offence, other interviews with the mother, sister of the deceased, the Comptroller of Customs, Customer Service Manager, Marpin, Samantha Matthew, mother of the defendant's children and former common law partner, colleagues at the Customs Department, a therapist who worked with the defendant and community assessment.
- [22] In the end, Ms. Delia Giddings Stedman gave the following as her general assessment and conclusion:

"Based on my assessment, I wish to draw the attention of the Court to the following:

Layne's Sentiments: Layne described himself as an easy going, hardworking and extremely tolerant and productive young man. He said that this is the first time that he has been in conflict with the law and expressed remorse and sadness as it relates to the entire incident which claimed the life of a young man. He emphasized that his action was not intentional.

Family history and sentiments: Layne was born from a marital union however, his parents separated when he was about nine years. He was raised by his mother and Layne expressed that he experienced a comfortable and happy childhood. Layne also disclosed that he and his father do not have a relationship.

Sentiments of the deceased brother: Christian said that Samuel's death was a shock to the entire family especially their mother, who took the news of her son's death very hard. Christian said that he will not have any difficulty with whatever sentence the Honourable Court imposes.

Sentiments of former colleagues: The colleagues all echoed similar sentiments as it relates to Layne's character trait as one who is easy going, very dependable and one who took his job seriously. The colleagues are also asking the court to be lenient as it relates to sentencing.

Conclusion

It is sad that a life was taken under such circumstances. Layne himself admitted that he cannot reverse what has happened to bring back that life. Based on the sentiments expressed one may deduce that he shoulders the responsibility. Despite the fact that Layne feels the unfortunate incident was unintentional. Whether or not that is in fact the case, the question of accountability comes up. A determination on sentencing now rests with the Court. Obviously a number of options are available. Firstly on the question of a custodial sentence, all those interviewed have appealed to the Court to spare Layne that form of sentence. Compensation to the family is one option so to a fine. In addition Layne's twelve (12) years licence for driving on Dominica's roads could be suspended for a set period."

Principles of sentencing in context

- [23] As noted above, the main purpose or objective of the **Vehicle and Road Traffic Act** is to regulate many aspects of the driving of motor vehicles on public roads in Dominica, in the context of the use of all public roads by residents as well as visitors. Thus, it may be said that a further objective is to make the public roads safe for all such persons.
- [24] It is in the foregoing context that the principle of deterrence becomes important. And although the evidence is that there is an insufficiency of speed limit signs on the Goodwill Road, this cannot be a licence to drive on that road or any other road in a dangerous manner. All lives matter.
- [25] The matter of society's retribution is equally important since the Goodwill Road is not only used by adults but also by children and visitors who, in most cases, will not be familiar with the road.
- [26] The principle of reformation is aimed at the defendant in all cases. In this case, although a type of violence was involved in the case, it differs from those crimes in which a weapon such as a gun or knife was used. Beyond that, this defendant has impressed the court that he is amenable to reform.
- [27] The principle of protection is especially relevant in the context of safety on the public roads. The death of the victim makes the case and it is not unforeseeable that several persons may die as a result of dangerous driving. At the end of the day the court must ensure that the sentences imposed reflects all of the principles, as appropriate.

Sentencing in reckless and dangerous driving cases

- [28] The High Court register indicates that over time the court has imposed fines coupled with an appropriate suspension of defendant's licence. This course of action is in alignment with a similar practice by the High Courts of Antigua and Barbuda and St. Kitts Nevis.
- [29] In the case of **The State v Faustinus Toussaint**⁴ on a charge of dangerous driving the defendant was fined \$7,500.00 or imprisonment for 4 years and license suspended for 3 years.
- [30] In the case of **The State v Anthony Laville**⁵ the fine was \$800.00 or 9 months imprisonment for reckless driving. The defendant was also placed on a bond for 2 years. This was in 2002. In the same year in **the State v Mc Donald Thomas**⁶ the fine imposed was \$5,000 or 2 years imprisonment, in the alternative for dangerous driving.
- [31] More recently in **the State v Benoit Rockson Guiste**⁷ a fine of \$3,500 was imposed to be paid in 6 months. The defendant's license was suspended for 4 years.
- [32] These cases highlight the fact that under the laws of Dominica the court has jurisdiction to impose a fine by virtue of the section 51 (1) of the **Criminal Law and Procedure Act** Chap 12:01. The power applies to summary and indictable matters.
- [33] The sentencing matrix must consist of the following:
1. The nature of the crime;
 2. The prohibition contained in section 51 (1) of Vehicle and Road Traffic Act;
 3. The manner of execution of the crime by speed and on the incorrect lane.
 4. The aggravating factors especially the fact that the victim landed some 91 feet from the point of impact.
 5. The distance the defendant stopped after the impact being 425 feet.
 6. Social Inquiry Report highlighting both the positive and then negative.
 7. The plea in mitigation painted a portrait of a good father and person generally who has undergone severe agony and of the loss of life in this manner is always shocking and alarming. The jury had no difficulty in accepting Amelia Cuffy's evidence that you were on fire despite your statement from the dock that you were not in any particular hurry.
- [33] Given the gravity of the matter, the defendant and others must be deterred. Accordingly a fine of \$15,000.00 is imposed to be paid in 12 months and in the alternative imprisonment for 2 years. Your license is suspended for 6 months with effect from 22nd February 2010.

⁴ Case No. 5 of 2004

⁵ Case No. 58 of 2002

⁶ Case No. 42 of 2002

⁷ Case No. 37 of 2012

Court's comments on the governing legislation and related matters

- [34] The court must and does respect the separation of powers doctrine as embodied in the Supreme Law of Dominica. However, this case highlights some matters, which warrant highlighting in the public interest.
- [35] The first relates to the fact that a person charged with causing death under the **Vehicle and Road Traffic Act** retains his or her license and the use of the offending vehicle after the event up to the trial and beyond. Indeed, in this case when the court adjourned to the *locus in quo* the vehicle in question was driven there too.
- [36] The court considers that this cannot be in the public interest since the cause of the accident could be excessive speed or some medical or psychiatric problem. These are unknowns so that the incident can be repeated resulting in further loss of life. The retention of driver's license falls in the same category. In this case for almost four years. Both matters should be examined in the public interest.
- [37] The other matter is, according to the evidence, the insufficiency or absence of speed limits signs on Goodwill Road for the avoidance of doubt. The same applies to the road under the cliff where most times speed is the order of the day. Indeed, a young man on a motorcycle was recently killed on that said road. These are matters that also impact on the public interest and more accurately, the public safety.

