

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE**

INDICTMENT NO: 5/11

**THE QUEEN
V.
JARRETT ENIKO MORGAN**



Appearances: **Kenneth Fergusson for the Crown**
Ben Tonner of Samson and McGrath
for the Defendant

Before: **The Hon. Mr. Justice Charles Quin**

Heard: **2nd and 12th September 2011**

SENTENCE RULING

1. On the 12th January 2011 the Defendant was charged on Indictment No. 5 of 2011 with causing death by dangerous driving contrary to s.67(1) as read with s.67(3) of the Traffic Law (2003 Revision).
2. The particulars of the offence are that Jarrett Eniko Morgan on the 15th day of January 2010, did drive a Honda Torneo motor vehicle Registration Number 133 387 on Shamrock Road, in the vicinity of Will T Drive, Bodden Town, Grand Cayman, dangerously, having regard to the manner of driving, thereby causing the death of Matthew Bodden.
3. The Defendant first appeared before the Grand Court on the 12th January 2011. From January to July 2011 the Defendant appeared on several

1 occasions. There was a certain delay in early 2011 relating to Legal Aid and
2 legal representation and in particular, in relation to Legal Aid for a Defence
3 expert.

4 4. On the 1st July 2011 the Defendant pleaded guilty.

5 ***Summary of the Facts by the Crown***

6 5. At about 10:15 p.m. on Friday the 15th January 2010 the Defendant was
7 driving a white Honda Torneo Registration Number 133 387. He was
8 accompanied in the car by Matthew Bodden, now deceased, who was in the
9 front seat, and by Matthew's brother, Phillip, who was in the back seat.

10 6. It is the Crown's case that just before the accident the Defendant was
11 travelling along Shamrock Road. He was reportedly racing with another car –
12 a Toyota Altezza motor car, with registration number 129 674, from the area
13 outside of Savannah Post Office, heading in the direction of Bodden Town.
14 When the Defendant got to the vicinity of Savannah Meadows he overtook
15 the Toyota Altezza, as well as five other cars which were in a line of traffic
16 ahead of the Toyota Altezza. Upon the Defendant approaching the right-hand
17 bend, which is in the vicinity of house #2451 on Shamrock Road, he was
18 driving at a speed estimated to be in excess of 100 mph, at which point he
19 said to have lost control of the vehicle. The vehicle began to skid to the left
20 of the roadway and collided with a concrete wall. The left rear section of the
21 vehicle impacted the said wall dragging the car along the said wall until it
22 came into contact with a column that forms part of the wall. At this point, the
23 impact caused the car to rotate in an anti-clockwise motion, and pieces of
24 debris from the car were scattered in several directions on to the roadway.

- 1 Some of the flying debris caused damage to other vehicles travelling on the
2 opposite side of the roadway.
- 3 7. The deceased somehow got himself out of the vehicle, whilst the Defendant
4 dragged the other passenger, Phillip Bodden, out of the vehicle.
- 5 8. The Defendant told the police officer who arrived on the scene that he was
6 the driver of the car and that the deceased and Phillip Bodden had been in the
7 car with him.
- 8 9. There was major damage to the Honda Torneo which included the left rear
9 wheel rim. The rim and tyre ended up on the shoulder of the opposite side of
10 the road. The car itself travelled over a distance of a further 300 feet before
11 coming to rest in the middle of the road at an angle facing the direction of
12 Will T Drive.
- 13 10. An Accident Reconstruction Expert found that at the time of the Defendant's
14 crash he was travelling at a speed in excess of 107 mph. The expert found
15 that the mechanical condition of the Defendant's vehicle did not play a part
16 in the motor vehicle accident.
- 17 11. Matthew Bodden was transported by ambulance to George Town Hospital,
18 and upon arrival there he was pronounced dead by Dr Sedano at 11:07 p.m.
- 19 12. The deceased, Matthew Bodden, died of a traumatic laceration of the thoracic
20 aorta due to a severe blunt force impact injury. The Defendant was
21 transported to George Town Hospital where he was arrested on suspicion of
22 causing death by dangerous driving.

- 1 13. The Defendant was interviewed on the 29th January 2010 and exercised his
2 right to remain silent.
- 3 14. On the 4th October 2010 the Defendant was formally charged with causing
4 death by dangerous driving.
- 5 15. Defence counsel, Mr. Tonner, has drawn the Court's attention to the
6 guidelines set out by the English Court of Appeal in *R v. Cooksley* [2003] 2
7 Cr. App. R. 18; the Cayman Islands Court of Appeal case of *Cayasso v. R*
8 CICA 1 of 2008 dated the 14th August 2008; and the Chief Justice's
9 Guidelines dated the 16th January 2002.
- 10 16. Mr. Tonner highlights the fact that in the United Kingdom the maximum
11 sentence is 14 years, whilst in the Cayman Islands the maximum sentence is
12 ten (10) years. Mr. Tonner points out that the Chief Justice's Guidelines state
13 that the tariff is five (5) years imprisonment for offences of causing death by
14 dangerous driving involving alcohol, speed or other aggravating factors. In
15 the absence of such aggravating factors, the tariff is three (3) years. In
16 addition Mr. Tonner points out that the Chief Justice's statement on tariffs
17 and guidelines relate to an accused who has unsuccessfully pleaded not
18 guilty, and that a guilty plea, especially an early one, is always viewed
19 favourably and would usually result in a discount.
- 20 17. I note that the Defendant did not tender his guilty plea until July of this year,
21 but I am prepared to make allowance for the fact that he had trouble
22 identifying legal counsel and that further delay was caused by the lateness of
23 obtaining the Accident Reconstruction Report.

1 18. The English Court of Appeal in *R v. Cooksley* set out the aggravating factors
2 which a Court should take into account when considering what sentence to
3 impose. The then Lord Chief Justice, Lord Woolf stated:

4 *“Aggravating factors included highly culpable standard of driving at the*
5 *time of the offence; i.e. (1) the consumption of drugs; (2) greatly*
6 *excessive speed, racing, competitive driving or showing off; (3)*
7 *disregard of warning from fellow passengers; (4) a prolonged, persistent*
8 *and deliberate course of bad driving; (5) aggressive driving; (6) driving*
9 *whilst the driver’s attention was distracted, e.g. by reading or using a*
10 *mobile phone; (7) driving when knowingly suffering from a medical*
11 *condition; (8) driving when knowingly deprived of adequate sleep or*
12 *rest; (9) driving a poorly maintained or dangerously loaded vehicle*
13 *especially when motivated by commercial concerns; (10) other offences*
14 *committed at the same time; (11) previous convictions for motoring*
15 *offences, particularly offences involving bad driving or the consumption*
16 *of alcohol before driving; (12) where more than one person was killed as*
17 *a result of the offence, multiple deaths being a more aggravating feature;*
18 *(13) serious injury to one or more victims, in addition to the death(s);*
19 *(14) irresponsible behaviour at the time of the offence, e.g. failing to*
20 *stop, claiming one of the victims was responsible for the crash; (15)*
21 *causing death in the course of the dangerous driving in the attempt to*
22 *avoid detection or apprehension; and (16) where the offence was*
23 *committed whilst on bail.”*

24

25 19. Lord Woolf went on to set out the mitigating factors and they included:

26 *“(a) a good driving record; (b) the absence of previous convictions; (c) a*
27 *timely plea of guilty; (d) genuine shock and remorse, especially where*
28 *the victim was a close relation or friend; (e) the defendant’s age; (f) the*
29 *fact [that] the offender had been seriously injured as a result of the*
30 *dangerous driving....”*

31

32 20. Lord Woolf then set out the guidelines for sentencing and stated:

33 *“For adult offenders, four starting points for sentences for causing death*
34 *by dangerous driving were set. (i) in cases which no aggravating feature*
35 *were present, a short custodial sentence of between 12 and 18 months*
36 *imprisonment, a custodial sentence only being avoidable if there were*
37 *exceptional mitigating features in the cases; (ii) the offences involving a*
38 *momentary dangerous error of judgment or short period of bad driving*
39 *that was aggravated by a habitually unacceptable standard of driving on*

1 the part of the defendant (namely the presence of one or more of the
2 aggravating factors listed in heads (10) to (16) above), a custodial
3 sentence of between two and three years, but in certain circumstances
4 five years' imprisonment would be appropriate due to the aggravating
5 features listed in heads (10) to (16) above; (iii) in cases where the
6 standard of the defendant's driving was more highly dangerous, a
7 custodial sentence of between four and five years' imprisonment,
8 indicating the presence of two or more of the aggravating features listed
9 in (1) to (9) above; and (iv) in cases involving [an] extremely high level
10 of culpability on the defendant's part, indicating three or more of the
11 aggravating features named in (1) to (9) above, a custodial sentence of
12 six years' imprisonment. A maximum sentence of 10 years' imprisonment
13 would be reserved for the most serious cases.”

14
15 21. The Cayman Islands Court of Appeal in *Cayasso v. R* CICA Number 1 of
16 2008 specifically adopted and applied the *R v. Cooksley* guidelines on
17 Sentencing for the offence of causing death by dangerous driving and
18 repeated them in full on pages 8 and 9 of their Judgment.

19 22. Defence counsel, Mr. Tonner, submits that Mr. Morgan comes into the
20 second category under the *R v. Cooksley* Guidelines, namely, that the offence
21 involved a momentary dangerous error of judgment, or a short period of bad
22 driving that was aggravated a habitually unacceptable standard of driving on
23 the part of the Defendant. Mr. Tonner submits that the speed is the one
24 aggravating feature and therefore a custodial sentence of between two (2) and
25 three (3) years should be considered based on a “not guilty” plea.

26 23. Crown counsel, Mr. Furgueson, submits that there are two aggravating
27 features, namely, speeding and also the fact that the Defendant overtook a
28 long line of traffic. Accordingly, the Crown submits that the offence comes
29 into the third category, as outlined by the English Court of Appeal in *R v.*
30 *Cooksley*, thereby attracting a custodial sentence of between four (4) and five
31 (5) years imprisonment.

1

Submissions by Defence

2

24. Mr. Tonner has stated on behalf of the Defendant that he extends a profound and sincere apology to the family and friends of Mr. Matthew Bodden.

3

4

25. Mr. Tonner points out that the Defendant admitted that he was the driver from the outset and made no attempt to pass the blame of the driving on to anybody else.

5

6

7

26. Although the Defendant exercised his legal right to remain silent at the interview in January 2010, he did enter a guilty plea on the 1st July 2011.

8

9

27. I have received considerable assistance from the helpful and detailed report of Trisha Smith, dated the 24th August 2011. It is clear from this report that the Defendant does exhibit genuine remorse for this tragic loss of a young life. The Court also notes that although the mother and brother of the deceased are having great difficulties in dealing with the loss of their son and their brother, they do understand that the Defendant did not intend to end Matthew Bodden's life. Further the report reveals that the mother and brother have, over time, forgiven the Defendant for this tragic event. Indeed, it has been noted by the Court that the deceased's brother, Phillip Bodden, was in Court to support the Defendant.

10

11

12

13

14

15

16

17

18

19

28. I take into account that the Defendant has no previous convictions and also has a good work record – having been employed with the Cayman Islands Government since leaving school. I also take into account the complimentary references the Court has received on the Defendant's behalf from his employers and from highly regarded members of the community. It is clear

20

21

22

23

1 from these references that the Defendant is deeply remorseful for the loss of
2 the life of Matthew Bodden.

3 29. The Defendant is a bright young man who, not only had a good work record,
4 but was also a talented footballer and was part of the Cayman Islands
5 National team.

6 30. The principle harm of such an offence is the tragic end of a young man's life
7 and that is the element of the offence which primarily determines the starting
8 point for the Sentence the Court must impose.

9 31. Lord Taylor the former United Kingdom Chief Justice stated in the *Attorney*
10 *General's Reference Number 14 and 24 of 1993* [1994] 15 Cr App R 640:

11 *"We wish to stress that life cannot be restored nor can a loss be*
12 *measured by the length of a prison sentence. We recognise that no term*
13 *of years or months imposed on the offender can reconcile the family of a*
14 *deceased victim to their loss, nor will it cure their anguish."*

15

16 32. As the Court stated in the Sentence Ruling in *R v. Emelio Borden Castillo*,
17 Indictment 39 of 2008, dated the 28th September 2009:

18 *"Accidents caused by dangerous driving have resulted in immense*
19 *human suffering and this is a significant element of such offences which*
20 *the Court must take into account. Regrettably the Cayman Islands has a*
21 *very bad record for offences of this nature and the Court must also be*
22 *mindful of this fact."*

23

24

25

26

27

1 33. This is a tragic case and the immensely sad death of young Matthew Bodden
2 is punishment in itself for the Defendant.

3 34. I take into account that the Defendant is a young man who has pleaded
4 guilty. I also take into account his good character and his excellent work
5 record. However, I cannot ignore the fact that he was travelling at a seriously
6 dangerous speed of over 100 mph. In addition, the fact that the Defendant
7 was racing when he overtook five vehicles constitutes very dangerous
8 driving, which led directly to the death of young Matthew Bodden.

9 35. I find it difficult to imagine a more dangerous piece of driving. It is a miracle
10 that more people were not killed or seriously and permanently injured.

11 36. A tragedy has occurred here. A young life has been lost directly as a result of
12 the dangerous and reckless handling of a motor car by the Defendant.

13 37. The Court must impose a sentence which in some measure drives home the
14 message of the dangers that can result from dangerous driving on the public
15 road. The gravity of the consequences that can flow from drivers not
16 maintaining proper and lawful standards of driving has to be appreciated by
17 all drivers. The drivers who drive dangerously and find themselves in
18 situations, such as the one in which this Defendant now finds himself, must
19 realise that no matter what their mitigating circumstances, a custodial
20 sentence will be imposed.

21

22

1 38. However, despite the fact that this offence would appear to straddle between
2 category 2 and category 3 of the *R v. Cooksley* Guidelines, I will only
3 impose a sentence of two (2) years imprisonment and disqualify the
4 Defendant from driving for five (5) years.

5

6

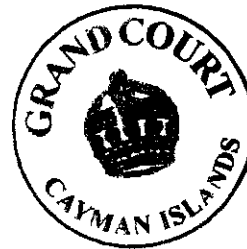
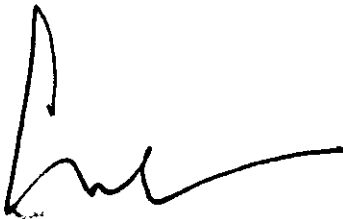
7 **Dated this the 12th September 2011**

8

9

10

11



12 **Honourable Mr. Justice Charles Quin**

13 **Judge of the Grand Court**