



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 8 and 9 of 2023**
5
6

7
8 **R**
9

10 **V.**
11

12 **KESLY ARNOLDO MARTINEZ EBANKS**
13
14

15 **Appearances:** **Mr. Kenneth Ferguson, Crown Counsel 1, Office of the Director of**
16 **Public Prosecutions for the Prosecution**
17

18 **Ms. Amelia Fosuhene of Brady Attorneys-at Law for the**
19 **Defence**
20

21 **Before:** **The Hon. Justice Cheryll Richards KC**
22

23 **Submissions Heard:** **23rd January 2024**
24

25 **Sentence Judgment:** **8th February 2024**
26
27

28
29 **HEADNOTE**
30

31 *Criminal Law - Causing Death by Dangerous Driving contrary to s.75 of the Traffic Act (2021 Revision),*
32 *Causing Grievous Bodily Harm contrary to s. 204 of the Penal Code (2019 Revision) - Cayman Islands*
33 *Sentencing Guidelines - Principles on Sentencing.*
34
35
36



SENTENCE JUDGMENT

- 1
2
3 1. The defendant is before the Court for sentencing following his guilty pleas to the two counts on
4 the Indictment.
5
- 6 2. **Count 1** charges him with the offence of Causing Death by Dangerous Driving contrary to s.75
7 of the *Traffic Act* (2021 Revision). The particulars are that he on the 23rd day of May 2021 drove
8 a Changhan CS75 SUV bearing registration number 198 498 dangerously on South Church
9 Street, George Town, Grand Cayman, Cayman Islands and thereby caused the death of Kiarah
10 Shikale Perkins.
11
- 12 3. The maximum sentence for this offence is ten years imprisonment. In addition, the statute
13 provides that the offender shall, without an order by the court, automatically be disqualified from
14 holding or obtaining a driver's license for a term of five years or such longer period as the court
15 may order. The period of disqualification runs from the date of conviction or the expiration of a
16 sentence of imprisonment, as the court may direct, and the particulars of the offence shall be
17 endorsed on the driver's driving record.
18
- 19 4. **Count 2** charges him with the offence of Causing Grievous Bodily Harm contrary to s.204 of the
20 *Penal Code* (2019 Revision). The particulars are that he on the 23rd May 2021 at the said location
21 unlawfully and maliciously caused grievous bodily harm to Roxanne Del Sol Ang.
22
- 23 5. The maximum penalty for this offence is 7 years imprisonment.
24

BACKGROUND

- 25
26
27 6. The defendant first appeared in the Summary Court on the 12th January 2023 at which time the
28 case was transmitted to the Grand Court.
29
- 30 7. He first appeared in the Grand Court on the 20th January 2023. Counsel for the defendant
31 informed the Court that he was not ready to be arraigned and sought time to go through the papers.
32 Counsel said that an expert may be needed to consider the evidence in the case. The case was



1 then adjourned to the 3rd March 2023 for arraignment. On that day the defendant entered not
2 guilty pleas to both counts on the Indictment and his Counsel requested that the matter be
3 mentioned on the 10th March 2023.

4
5 8. On 10th March 2023 a trial date of the 9th October 2023 was set together with a Case Management
6 Hearing (CMH) date of the 29th June 2023.

7
8 9. On the CMH date Counsel indicated to the Court that a guilty plea was likely and that she would
9 be writing to the prosecution. An adjournment was requested to the 4th August 2023. On that date
10 Counsel indicated that the defendant intended to plead guilty to the count of Causing Death by
11 Dangerous Driving and requested an adjournment for one week within which to submit a Basis
12 of Plea to be reviewed by the prosecution. The matter was then adjourned to the 11th August 2023
13 and thereafter to the 18th August 2023 both times at the request of defence Counsel.

14
15 10. On the 18th August 2023, the defendant pleaded guilty to Count 1 Causing Death by Dangerous
16 Driving. Count 2 was not put and defence Counsel requested that the prosecution review the
17 acceptability of this plea. The prosecution indicated orally that the plea to Count 1 only was not
18 acceptable. The case was adjourned to the 15th September 2023.

19
20 11. On the 14th September 2023 the Prosecution advised in writing that it would be proceeding with
21 Count 2. On the following day 15th September 2023, the defendant was arraigned on Count 2 and
22 pleaded guilty.

23
24 **THE FACTS**

25
26 12. The prosecution has provided a summary of the facts. The deceased victim Kiarah Perkins was
27 31 years old. She was an American citizen who had been employed on Island as a Registered
28 Nurse since September 2017. She was married here in August of 2017. In February 2021, she
29 resigned her post with the intention that she and her husband would return to the United States to
30 start a family. Their departure date was the 26th May 2021.

1 13. On the evening of the incident, the 22nd May 2021, her work colleagues arranged a farewell
2 function for her at the hospital. After that ended, her friend and co-worker, the second victim
3 Roxanne Del Sol Ang also arranged a farewell event for her at a local restaurant on North Church
4 Street.¹

5
6 14. The defendant and his friend Reuben Barnes went to the same local restaurant that night. Mr.
7 Barnes had borrowed his mother's Changan Sports Utility Vehicle ("SUV") registration number
8 198 498.

9
10 15. Sometime after 12 midnight Ms. Perkins and Ms. Ang left the restaurant. Ms. Perkins was driving
11 Ms. Ang's Honda Fit motor vehicle with Ms. Ang as a front seat passenger. At about 12:30am in
12 the early morning of the 23rd May 2021, Ms. Perkins was driving on South Sound Road when the
13 defendant who was driving the SUV, overtook a line of three vehicles in front of him and collided
14 head on into the Honda Fit motor vehicle.

15
16 16. Each of the three drivers whose vehicles were overtaken by the defendant gave witness
17 statements. The driver of the first vehicle said that the SUV pulled up right behind her and was
18 speeding. The driver of the vehicle directly in front of her, Mr. William McTaggart said that when
19 he noticed that the SUV type vehicle was overtaking the car behind him and was trying to
20 overtake his vehicle, he looked down the road and saw the white Honda Fit travelling toward
21 them. As a result, he slowed down to give a further gap to the SUV expecting the driver to pull
22 back into the lane, but it did not. It continued in that opposite lane, further overtook the car driving
23 in front of him and collided into the Honda Fit. He said that the Honda Fit went airborne to the
24 extent that he could see the under carriage of it. He called 911 and reported the collision.

25
26 17. Upon the arrival of the police and ambulance, the victim Perkins was taken to the hospital where
27 she was pronounced dead by a doctor. A subsequent postmortem report indicated that she died as
28 a result of multiple blunt trauma to her chest and lower extremities.



¹ Cayman Cabana

1 18. The second victim, Ms. Ang, suffered blunt chest trauma, hemothorax which is blood between
2 her chest wall and lung and fractures of three of her left ribs and left clavicle. She was hospitalised
3 for ten days and unable to return to work for ten weeks.

4
5 19. The defendant was also taken to the hospital, where a blood sample was collected from him at
6 2:17am that morning. When analysed it gave a blood/alcohol reading of 0.160%. The prescribed
7 limit at that time was 0.100%.

8
9 20. The defendant was interviewed under caution on the 29th July 2021 in the presence of an Attorney.
10 He provided a prepared statement which was tendered as Exhibit 1 for the purpose of this
11 sentence hearing. In it he stated: -



12
13 *"I Kesly Martinez Ebanks will say as follows:-*

14
15 *On night of Saturday 22nd May 2021, I went with my friend Rueben to Cabana for an event.*
16 *I did not want to go but he made me feel like I was not a friend if I did not go, so I relented*
17 *and went. I had about 3-4 drinks that night. I drank Hennessy and Appleton.*

18 *As we left we walked towards the car which was parked across from Rackhams. I walked*
19 *across the road to go to Rueben's car and waited for him by the passenger side whilst he*
20 *spoke to others who were there. He then walked up to the car and handed me the keys. He*
21 *said he was too drunk to drive but I would be okay. I said I did not have a licence but he*
22 *said it would be ok because he was qualified to drive. It was his car and he was giving me*
23 *permission. He also said his friend - who I don't know, would be in the back and they were*
24 *both qualified so it would be like a driving lesson. He said he would direct me on what I*
25 *should do. Although he had been drinking I do not believe he was so drunk to not know*
26 *what he was doing, but might be drunk to be just over the limit. Although I don't know*
27 *what the limit is because I don't drive. And I did not think the instructions on driving he*
28 *was giving he was dangerous.*

29 *I recall accepting the keys and I recall getting into the car. I recall Rueben telling me where*
30 *to go and how to manoeuvre the car.*

31 *The next thing I know is that I crashed into a white car. I recall the car was small. I recall*
32 *getting out of the car I was in and I recall everything being confused. Then I fell to the*



1 *side because my ankle was in pain. I don't recall much else. I was later told a lady had*
2 *died.*

3 *I am so sorry that I drove. I am so so sorry that I was the person behind the wheel of the*
4 *car which resulted in that lady dying. I wish it had been me and not her. I would do anything*
5 *to trade places with her. I am sorry for any pain I have caused to her friends and family.*

6 *I know I will face punishment but wish at this stage to let the Police know what happened*
7 *because her family and friends do not deserve this at all.*

8 *I have asked my lawyer to write this statement but these are my words, put into writing by*
9 *her.*

10 *I have been traumatised since this accident and for that reason I am unable to talk about*
11 *this without breaking down. I have been on medication since the accident. I will not answer*
12 *questions but that is not because I don't want to, it is because I can't. Again I so so sorry*
13 *for all that has happened."*

14
15 21. The prosecution notes and the defence accept that there are different accounts given by Mr.
16 Barnes and Mr. Nugent, who were passengers in the SUV, as to who instigated the driving that
17 night.

18
19 22. The scene and vehicles were examined by two Accident Reconstruction experts, Collin Redden
20 and Sgt. Lenford Butler. Collin Redden provided a report which was received as Exhibit 3 for
21 the purpose of this sentence hearing. From the markings left on the road by the vehicles he
22 concluded that the point of impact was in the north bound lane. This lane was the direction of
23 travel for the Honda, the incorrect lane for the Changan SUV which was travelling in the opposite
24 direction. There were no mechanical defects which played a role in the collision. He states:

25
26 *"The driver of the Changan who was heading south or towards South Sound direction and*
27 *was approaching a blind left bend just ahead should not have been on the incorrect side of*
28 *the road as they could have met an oncoming vehicle heading in the opposite direction*
29 *which is what occurred resulting in this fatal collision."*

30 ...

31 *The driver of the Honda as it came around the bend and was heading north towards town*
32 *would not have expected to find a vehicle in their lane heading in the opposite direction."*



1
2 23. Mr. Redden also stated that what should be taken into consideration is the condition and
3 experience of the driver of the SUV to see if these played a role.
4

5 24. PS Lenford Butler provides a Reconstruction Report dated 5th July 2022 which was received as
6 Exhibit 2 for the purpose of this sentence hearing. From his examination he states that:
7

8 *“The Changan C75 SUV with a weight of 4541.52 lbs. was overtaking a line of vehicles*
9 *ahead of him approaching the right hand bend for motorists travelling in the opposite*
10 *direction in the northbound lane. Due to the fact that the Honda Fit with a weight of 2496*
11 *to 2617 lbs. just negotiated the blind right-hand bend and could not have seen the*
12 *approaching Changan SUV travelling south in the northbound lane. The driver of Honda*
13 *Fit had no time at all to react to avoid the collision, also the driver of the Changan C75*
14 *SUV did not see the Honda Fit approaching and collided head on into the Honda Fit.*

15
16 *The reaction time for motorists at night to avoid a collision when one perceives a hazard*
17 *is 2.0 to 2.5 seconds. There was no evidence such as skid marks, tyre scuff mark from a*
18 *sharp steering manoeuvre from the Honda or the Changan SUV before the area of impact*
19 *to indicate that either driver perceived each other prior to the collision in her path.”*
20

21 25. PS Butler concludes that the speed of the SUV was 29.84 miles an hour in a 30-Mph zone.
22

23 **VICTIM IMPACT REPORTS**

24

25 26. The Department of Community Rehabilitation (“DCR”) has provided Victim Impact Reports
26 (“VIR”) in respect of both victims. There is a VIR dated 3rd November 2023 from the parents,
27 siblings and husband of victim Perkins and five of her best friends.
28

29 27. Her husband speaks of his deep unhappiness which has led to medical and serious psychological
30 issues for him. He describes his grief at the loss of his wife and the destruction of their hopes,
31 and plans for the future. For him there is no day or night of peace. There has also been major and
32 direct financial impact and loss of some \$31,000.00 for repatriation of the body of the victim and



1 other costs. As the defendant was not licensed, the insurance company for the SUV has refused
2 to compensate the victims.

3
4 28. The victim's mother and father speak of intense sorrow and pain that they believe will last a
5 lifetime. Five of her friends, Jessica Bursovsky, Jessica Garcon, Elena Josephs, Christine Jensen
6 and Rhea Singleton detail how meaningful and special she was to them and the grief which they
7 continue to feel at losing her and her friends. Her friend Ms. Singleton puts it in the following
8 way:

9 *“Since the day Kiarah left this earth, I have lived in a perpetual nightmare that I will never*
10 *wake from. A heart that will forever be broken, our lives will never be the same. The world*
11 *is dimmer without the bright light she brought to all the lives she touched. Every day, I*
12 *fight against rationale, struggling to believe this new harsh reality that Kiarah is no longer*
13 *with us. Endless tears and gut-wrenching pain are our new reality without her here. To*
14 *whomever reads this heartfelt letter, I want you to know what a warm, kind, selfless loyal,*
15 *God-fearing, infectious, hilarious, giving, and phenomenally wonderful person Kiarah was*
16 *to all she encountered. We were blessed to be in Kiarah's orbit. She was like my sister;*
17 *blood couldn't bring us any closer. She was a part of a divine sisterhood and soul tie. There*
18 *were five of us in total. I've held three remarkable women in my heart as sisters since*
19 *elementary school. We thought our sisterhood was complete until we met Kiarah freshman*
20 *year in high school. We instantly knew we were never complete without her. We have been*
21 *known as the Phat 5 ever since.”*

22
23 29. There is a second VIR dated 9th November 2023 from the family of the victim, Ms. Perkins. In
24 an attached Victim Impact Statement, her mother-in-Law, Tanya Rutledge describes the
25 devastating impact that the death has had on her and on the family. Their dreams, hopes and
26 plans for the future are destroyed, relocation to the United States, start of a family, the joyful
27 anticipation of grandparents for grandchildren and the absence of her friendship and love.

28
29 30. In a VIR dated 7th November 2023, Roxanne Del Sol Ang reports that she has lost her confidence
30 while driving and is only able to manage very short journeys on quiet roads. She has lost her best
31 friend. She suffered fractures to her face and a broken right hip. There was a lengthy recovery
32 period, and she was unable to work for ten weeks due to her injuries.



1
2 31. The Probation Officer concludes that she was significantly impacted at the psychological,
3 physical, and financial levels.

4
5 32. There is a report from Mr. Redden of Vehicle Solutions Grand Cayman that following an
6 examination of her car, his conclusion is that it is no longer roadworthy and had a value of
7 \$7,000.00.

8
9 **ANTECEDENT HISTORY**

10
11 33. The record for the antecedent history of the defendant was tendered as Exhibit 4. He has four
12 previous convictions for traffic offences in March 2016. On the 17th March 2016 he was fined
13 for the offence of driving without insurance and disqualified from driving for 2 months. He was
14 also fined for driving without being qualified, driving with an expired vehicle license and driving
15 without a certificate of road worthiness.

16
17 34. The Probation Officer also provides information that on the 21st March 2016 the defendant
18 received a sentence of 12 months' probation for an offence of Consumption of Ganja and that he
19 was deemed to have successfully completed the Probation Order.

20
21 **SOCIAL INQUIRY REPORT**

22
23 35. The DCR has provided a Social Inquiry Report ("SIR") dated 30th October 2023. The Court has
24 read this Report in its entirety and takes into account everything said therein in favour of the
25 defendant.

26
27 36. The defendant is 27 years old. He is the father of two young children aged 4 years and 1 year old.
28 His early childhood was marked by abuse and neglect. In later years he was in supportive and
29 loving households. He graduated high school with certification in core subjects and a tertiary
30 qualification in technical subjects. Having entered the field of work in 2012, he held various jobs
31 until 2017 when he began his present employment. He has maintained steady employment at his
32 workplace and has been promoted to a supervisory role. His employer speaks highly of him, of



1 his improved attendance at work and his good work ethic. His monthly financial balance after
2 receiving his pay and dealing with outgoings is about \$575.00 per month.

3
4 37. Community contacts attest to his good personal qualities and character and the absence of any
5 violence or aggression in him.

6
7 38. Under the heading Attitude Toward Offending the Probation Officer states that he presents with
8 a comprehensive insight into the consequences of his behaviour on the surviving victim, the
9 families of the deceased and his own relatives. He is said to be able to identify the physical,
10 emotional and psychological consequences, on both a short and long term basis. He told the
11 Officer that the deceased had lost her life in the most tragic, indecent way and he recognised that
12 her husband would now have to spend the rest of his life without his wife by his side. He also
13 said that he had written a letter to Ms. Perkins' relatives two weeks after the offences to beg
14 forgiveness and pardon. He said that the letter was never sent because of his recognition that it
15 would be very hard for them to reach a point of forgiveness, given that he will never be able to
16 forgive himself. He expressed the desire to engage in restorative justice with Ms. Ang and the
17 family of Ms. Perkins.

18
19 39. The Officer identifies the factors contributing to his offending behaviour in these matters as
20 including: -

21
22 *"...his use of alcohol, difficulties in refusing the requests of others, and consequential*
23 *thinking deficits; as seen in his failure to plan accordingly for safe passage home when*
24 *engaging in social activities."*

25
26 40. The Officer notes that factors which would serve to combat further involvement in offending
27 behaviour include his high level of intelligence, educational achievements, full time employment
28 and the support that he receives from his friends and family members.

29
30 41. The defendant was assessed using the LS/CMI/Risk Need Assessment tool. His overall risk of
31 re-offending was assessed as low with none of the eight criminogenic factors in the Very High or
32 High categories. His consumption of alcohol is assessed as problematic due to the current offence

1 and information from a community contact. He is described as remorseful and demonstrating a
2 high level of victim awareness and empathy.

3
4 42. The Officer recommends that as part of his sentence, he is provided with individual trauma
5 counseling: -

6
7 *“...alongside other therapeutic activities/interventions to address specific risk and need*
8 *factors. He will also be encouraged to attend the Interpersonal Relationship Enhancement*
9 *and Awareness Programme to assist him in maintaining positive relations with family*
10 *members and friends and to encourage him to maintain appropriate boundaries with others*
11 *incarcerated in the secure estate.”*



12
13 **LETTER OF APOLOGY**

14
15 43. The defendant, through his Counsel, has provided a letter of apology dated the 2nd of June 2021.
16 The defendant expresses his regret to the family of the victim. He describes what occurred as an
17 unspeakable tragedy. He says that he would do anything to change what happened and to give
18 the world back Ms. Perkins. He asks that one day the family find it in their hearts to forgive him.
19 He says that he will never forget or forgive himself for what happened. He asks that they do not
20 see him as a bad person and says that he understands that as the driver that night his actions will
21 come with consequences.

22
23 **CHARACTER REFERENCES**

24
25 44. Defence Counsel has provided nine character references². These are from a sister of the defendant
26 and from persons who know him well from working, living and associating with him on a regular
27 basis. The Court has read all of these and takes them into account. They speak to his remorse and
28 regret at what occurred. The defendant is described as a loving and devoted father, a hardworking
29 and caring individual, dependable, responsible, honest and courteous. He is said to have always

² Shelley Ebanks dated 31st May 2021, Aleah Copeland dated 3rd June 2021, Duran E. Dawkins dated 1st June 2021, Gloria Ebanks undated, Jonathan E. McLaughlin undated, Brianna Parchment dated 4th June 2021, Janell Dyer undated, Diraldo Martin dated 4th June 2021, Tishunda Prendergast dated 3rd June 2021.

1 displayed a high degree of integrity and to have the utmost respect for people. He cares for his
2 family and friends and strives to make a difference in people's lives. He is said to be an ambitious
3 young Caymanian who demonstrates leadership abilities.



4
5 **THE CAYMAN ISLANDS SENTENCING GUIDELINES**
6

7 45. The *Cayman Islands Sentencing Guidelines* for the offence of Causing Death by Dangerous
8 Driving provides that because the principal harm done by these offences is death, the Harm is at
9 the most serious level. Thus, the primary determinant for the starting point of sentence is the
10 culpability of the offender. Culpability is to be determined by an evaluation of the quality of the
11 driving and the degree of the danger that it foreseeably created.

12
13 46. There are four factors which may be regarded as determinate of offence seriousness. The effect
14 of alcohol or drugs is one. Under this heading, consumption of alcohol above the legal limit is
15 listed. The others are inappropriate speed of the vehicle, seriously culpable behaviour of the
16 offender and failure to have proper regard to vulnerable road users. Aggressive driving such as
17 inappropriate attempts to overtake is listed under seriously culpable behaviour.

18
19 47. The *Guidelines* state: -
20

21 *“For those offences where the presence of alcohol or drugs is not an element of the offence,*
22 *where there is sufficient evidence of driving impairment attributable to alcohol or drugs,*
23 *the consumption of alcohol or drugs prior to driving will make an offence more serious ..”*
24

25 48. The prosecution submits that under the *Guidelines* evidence as to the defendant being over the
26 legal limit and his overtaking of more than one vehicle on a single lane road puts the defendant's
27 culpability in the category of High Culpability. Counsel for the prosecution submits that the
28 defendant deliberately ignored or had a flagrant disregard for the great danger being posed to
29 other road users.
30



1 49. Counsel also submits that it is clear that the defendant was grossly impaired and that the offending
2 should be placed at a high level with a starting point of 7 years and a sentence range of 6 to 10
3 years custody.

4
5 50. The prosecution has drawn the Court's attention to a number of cases³. Some of these predate the
6 **Guidelines**.

7
8 51. In the case of *Conroy Nairne v. R*⁴, the applicant sought leave to appeal his sentence of six years
9 imprisonment on the ground that this was manifestly excessive. The applicant had pleaded guilty
10 to causing death by dangerous driving. He had driven along a busy road, at night, at speeds in
11 excess of 100 m.p.h. While travelling at 127 m.p.h. his car hit a kerb, crashed and caught fire.
12 His passenger suffered burns from which she later died.

13
14 52. The Cayman Islands Court of Appeal considered the *Chief Justice's Statement on Tariffs and*
15 *Guidelines for Sentencing for Certain Offences 2002*, the guidelines as set out by the English
16 Court of Appeal in the case of *R v Cooksley*⁵, the England and Wales *Sentencing Council*
17 *Guidelines 2008* and the earlier case of *Cayasso v R*⁶.

18
19 53. The Court stated that the case under appeal was one where the driving had been quite
20 exceptionally dangerous because it was characterised by prolonged speeding at over 100 m.p.h.
21 on a major road. In granting leave but dismissing the appeal the conclusion was that the
22 sentencing Judge was entitled to take the view that the case was so serious as to warrant a starting
23 point greater than the basic tariff or the starting point suggested by the England and Wales
24 **Guidelines**. On the issue of the application of guidelines as to starting points and aggravating
25 factors the Court said this: -

26
27 *"It is a common mistake in the application of sentencing guidelines to assume that once a*
28 *series of factors is sufficient to place the offence within a guideline category, those factors*

³ Cayasso v R CICA 1 of 2009, [2008] CILR N [14]; Conroy Nairne v R [2018] (1) CILR 518; O'Donoghue v R [1998] CILR 362; R v Piercy [2014] (1) CILR Note 7, Grand Court Unreported Judgment Ind 217 of 2012, dated 6th May 2014; Domladis v R [2016] 1 CILR Note 17, CICA 31/2014 Judgment dated 11th February 2016; R v Simon Courtney CICA 19/2016 Unreported dated 6th April 2017

⁴ CICA 19/2017 - [2018] 1 CILR 518

⁵ [2003] EWCA Crim 996

⁶ [2008] CILR N [14].



1 *become irrelevant in the application of the sentence bracket within that category. Their*
2 *nature, viewed as a whole, may be such as to bring the offence not only into the category*
3 *but into the upper bracket of that category. There is no double counting in taking account*
4 *of the factors as relevant both to the determination of the category and to the determination*
5 *of the appropriate position of the offence within the sentencing bracket.”*
6

7 54. Defence Counsel disagrees with the prosecution as to the submitted starting point of 7 years and
8 the determinants of culpability. Counsel submits that while this case at first blush may attract the
9 highest culpability, the fact that a lesser culpability factor is present serves to place it into the
10 category of medium culpability.

11
12 55. Counsel submits that this was not a prolonged or deliberate course of very bad driving, and that
13 there is no evidence that what the defendant had consumed led to gross impairment.

14
15 56. Counsel said also that it is not clear that speed can be properly advanced. One witness, Mr.
16 McTaggart, says that the SUV slowed down and the calculation given by PS Butler is not of a
17 speed that is greater than the speed limit.

18
19 57. Counsel said that the defendant accepts that he had been drinking and was over the limit. He
20 accepts that alcohol may have been a factor in his awareness. He accepts that it may not have
21 been safe to overtake because of the bend in the road.

22
23 58. Counsel submits that this offending falls into medium culpability because it was driving which
24 created a substantial risk of danger, that is attempting to manoeuvre on a bend which should not
25 have been attempted. Counsel submits that this is a Level 2 offence because Level 1 is reserved
26 for the most serious offence while Level 2 is driving that creates a substantial risk of danger. It is
27 submitted that the starting point for this case is 4 years custody with a range of sentence of 3 to
28 6 years custody.



1 **AGGRAVATING FACTORS**

2
3 59. The prosecution submits that the aggravating factors are the defendant's prior convictions for
4 driving offences and the fact that he was driving without being qualified and without being
5 insured.

6
7 60. Defence Counsel accepts that it is an aggravating factor that more than one person was injured.
8 Counsel submits that the incidents in 2016 were some time ago when the defendant would have
9 been about 20 years old or less. Counsel said that it is noteworthy that the defendant has not been
10 back before the Court since then and asked the Court to give little or no weight to the past
11 convictions when dealing with this case.

12
13 **CREDIT FOR GUILTY PLEA**

14
15 61. The *Cayman Islands Sentencing Guidelines* provide that where a plea is entered after a trial date
16 is set the applicable discount is not one third but 25%.

17
18 62. The prosecution submits that this defendant is not entitled to a full discount for his guilty pleas
19 as they were not entered at the earliest reasonable time in all the circumstances.

20
21 63. Defence Counsel agreed that the guilty pleas were not entered at the first Court hearing but said
22 that at the very outset in July 2021 the defendant accepted responsibility. He was not charged
23 until December 2022. The delay is not the fault of the defendant. The charge filing date was the
24 7th December 2022. Counsel said that it is accepted that there were delays on her part. She had
25 sought time to write to the prosecution in relation to the second Count on the Indictment, but her
26 recollection is that there was an indication given that a guilty plea would be forthcoming.

27
28 **SUBMISSIONS IN MITIGATION**

29
30 64. Defence Counsel submitted that from the statement of Mr. Barnes of the 6th December 2021, Mr.
31 Barnes had been told by his sister not to drive. Mr. Barnes knew that he was over the legal limit
32 and asked the defendant to drive the vehicle and the defendant foolishly agreed. Counsel said that



1 the defendant is not using this as an excuse. He accepts that the car was on the wrong side of the
2 road in the process of overtaking and that is how the incident occurred.

3
4 65. Counsel said that the defendant has been racked with guilt over what occurred and had to be
5 prescribed anxiety and depression medication by the 27th May 2021. He is clear that the state he
6 was in meant that he was in no position to speak during the police interview.

7
8 66. Counsel said that but for the situation that night this is not a young man who would be before the
9 Courts. He is described as a decent young man who is kind and considerate and a devoted father
10 to his young son. He did not think he was over the limit or that the instructions that he was given
11 were dangerous. Counsel said that overtaking three cars was a factor, listening to his friend was
12 a factor and being an inexperienced driver was a factor. Counsel asked the Court to note that the
13 defendant also spent two days in hospital.

14
15 67. Defence Counsel referenced the case of *Anastasia Watson v R*⁷, for causing death by careless
16 driving, and the observations of the Court of Appeal therein. In that case a sentence of 12 months
17 was reduced to 9 months' imprisonment on the basis that insufficient credit had been given by
18 the sentencing Judge for the appellant's personal circumstances. The appellant had driven at a
19 speed of 80 miles per hour in an easterly direction along Point Drive. While negotiating a left-
20 hand bend, she lost control of her vehicle which left the road, struck a concrete wall and pillar
21 killing her passenger. Alcohol was not a factor in the incident.

22
23 68. Counsel also referenced the case of *Igor Domaldis v R*⁸. In that case the appellant pleaded guilty
24 after his trial started and received a sentence of 4 years imprisonment. His sentence was upheld
25 on appeal. He had been racing his friend in a built-up area of George Town and traveling at twice
26 the speed for the location. His vehicle struck the car of his friend causing a collision from which
27 his friend suffered injuries and died.

28
29 69. The appellant argued that the sentence was manifestly excessive, and that the offence should have
30 been categorised as a Level 2 offence under the *United Kingdom Sentencing Council Guidelines*

⁷ CICA 4 of 2018, Unreported Judgment dated 15th August 2018

⁸ [2016] 1 CILR Note 17



1 because it involved dangerous driving. The Appellate Court said that the appellants' driving had
2 clearly constituted a Level 1 offence under those *Guidelines* because it demonstrated a deliberate
3 decision to ignore or a flagrant disregard for the rules of the road and an apparent disregard for
4 the danger caused to others. The Court noted that the appellant had driven on the wrong side of
5 the road at excessive speed and that the driving had taken place on a small road in the middle of
6 George Town. The Court concluded that the trial judge had properly characterised the offence as
7 a Level 1 offence.

8
9 70. Counsel submitted that the defendant in the instant case did not set out to cause harm. His
10 intention was to help a friend get home safely under the instruction of Mr. Barnes. Counsel
11 described the defendant as not a leader by nature and said that when one reads the SIR, he is
12 actually quite vulnerable. He is the vulnerable person in the group who would be the one to go
13 when sent.

14
15 71. Counsel submitted that the actions of a third party contributed significantly to the likelihood of a
16 collision occurring and said that the set of circumstances lent itself to the offence. Nobody took
17 a sensible view that night. The defendant's lack of driving experience also contributed. Counsel
18 said that the defendant is truly and genuinely remorseful. It is not about him feeling sorry for
19 himself but about him not being able to forgive himself. He is said not to be an overly strong
20 personality and custody would be significantly harder on him than on others. The consequence
21 of a custodial sentence is that he will lose his job for a while and his child will not have his
22 parental presence.

23
24 72. Counsel said that the defendant has been gainfully employed and has done everything right since
25 the day of the incident and asked that the Court exceptionally consider a noncustodial sentence
26 such as one which is suspended. Counsel urged that there is an exceptional person before the
27 Court with a high level of remorse. Alternatively, the Court is asked to keep any sentence as short
28 as possible knowing the likely impact upon him.

29
30 73. In response to a question from the Court as to the contribution of a third party, Counsel said that
31 it is accepted that there was contribution but that it was not significant.



1 **THE SENTENCE**

2
3 74. Culpability A or High Culpability cases include those in which there are a group of determinants
4 of seriousness which in isolation or a smaller number would place the offence in Level 2.

5
6 75. In this case, while driving at night and approaching a bend where visibility was restricted, the
7 defendant chose to overtake a line of three vehicles. This can only be described as seriously
8 culpable behaviour. It disregarded the great danger being caused to other road users. In addition,
9 the defendant had consumed alcohol to such an extent that he was over the prescribed limit.

10
11 76. In the view of this Court there are present in this case two of the factors that may be regarded as
12 determinants of offence seriousness, consumption of alcohol above the legal limit and aggressive
13 driving. The fact that there are two determinants of seriousness places this offending in the
14 category of High Culpability. The conclusion is that the driving is at Level 1 and involved the
15 deliberate decision to ignore the rules of the road and to disregard the great danger being caused
16 to others.

17
18 77. The starting point for this offence is therefore 7 years custody. From that starting point it is an
19 aggravating factor increasing the degree of harm that there was serious injury caused to a second
20 victim. The sentence is therefore increased from that starting point by 18 months to 8 ½ years or
21 102 months imprisonment.

22
23 78. The defendant has previous convictions for driving without insurance and driving without being
24 qualified. These convictions date back to 2016. Defence Counsel noted that this was some time
25 ago when the defendant was much younger and asked the Court to give them little weight. The
26 Court cannot fail to observe that the defendant was repeating offending behaviour by doing the
27 very thing which the Summary Court had previously enjoined him not to do. His previous
28 convictions serve to increase the sentence by 3 months to 105 months.

1 79. In mitigation the Court takes into account everything written and said in favour of the defendant.
2 These include:

- 3
- 4 (i) His genuine remorse.
 - 5 (ii) That he received injuries which lead to hospitalisation for two days.
 - 6 (iii) He has not offended in a similar way in the past (Dangerous Driving Causing
7 Death). He is at low risk of re-offending.
 - 8 (iv) His good personal qualities as described by the Probation Officer, in all the
9 character references and by his Counsel.
 - 10 (v) His lack of driving experience.
 - 11 (vi) His vulnerability.
 - 12 (vii) The delay in filing charges against him.
 - 13 (viii) The effect upon his family and his children and upon him of a sentence of
14 incarceration.



15

16 80. All these serve to reduce the sentence by 30 months to one of 75 months imprisonment.

17

18 81. The Court Records for 3rd March and 10th March 2023 indicate that there was no indication given
19 as to a possible guilty plea at the time the trial date was set. There is nothing to suggest that the
20 plea was entered at the first reasonable opportunity and that the defendant is entitled to the full
21 discount of one third. The defendant is given the recommended discount of 25% for his guilty
22 plea thus reducing the sentence of imprisonment to one of 57 months.

23

24 82. This Court has considered but cannot accede to the defence request for a non-custodial or
25 suspended sentence. The personal circumstances of the offender as good as they are do not make
26 a sentence of immediate custody unavoidable. This is a case where the Harm caused is at the
27 highest level. In one case it is irreparable. The culpability in the Court's view is also at the highest
28 level. This is not a case of momentary inattention or carelessness. This is a case where a deliberate
29 decision was taken by an adult to get behind the driver's wheel knowing that he had been drinking
30 Hennessy and Appleton liquor. The simple alternative could have been to call a taxi or a sober
31 friend or relative to drive them home.

32



1 83. This was a deliberate decision by the defendant to drive knowing that he did not have a license
2 to drive and could not have been covered by insurance. The reference to having licensed drivers
3 in the vehicle and being instructed by them appears to be but a weak excuse to cover what was
4 known to be wrong. This was not a driving lesson in the middle of the night. For him to think
5 and to say that persons who were too drunk to drive would be giving him instructions as to how
6 to drive must surely be illogical.

7
8 84. Not content with these two circumstances, rather than drive slowly or cautiously, there was what
9 can only be described as a deliberate and aggressive manoeuvre to overtake not one or two cars
10 but three cars while approaching a bend at night. The high level of danger which this must have
11 posed and did pose to other road users cannot be overstated.

12
13 85. The Court is mindful of the *Alternative Sentencing Act* (2008 Revision). Section 4 states that: -

14
15 *“A court shall, in imposing a punishment under this Law, take into account the following*
16 *principles —*

17 *(a) that the fundamental purpose of punishment is to contribute, along with crime*
18 *prevention initiatives, to respect for the law and the maintenance of a just, peaceful and*
19 *safe society by imposing just sanctions that have one or more of the following objectives*

20 —

21 *(i) to denounce unlawful conduct;*

22 *(ii) to deter the convicted person and other persons from committing offences;*

23 *(iii) to separate convicted persons from society, where necessary;*

24 *(iv) to assist in rehabilitating convicted persons;*

25 *(v) to provide reparations for harm done to victims or to the community; and*

26 *(vi) to promote a sense of responsibility in convicted persons, and acknowledgment of the*
27 *harm done to victims and to the community;”*

28
29 86. The primary aims of sentencing in this case must be punishment and deterrence, with the
30 secondary aim of rehabilitation.

1 87. The offending in this case is serious, such that the custody threshold is firmly passed. The Court
2 has considered whether the proposed sentence is proportionate to the offending and in the Court's
3 view it is.

4
5 88. The serious effect of the defendant driving without being qualified is that there was no insurance
6 coverage leaving the victims at serious financial loss. The victims seek compensation. In this
7 case the defendant faces a sentence of custody. He will not be able to work. The authorities are
8 clear. A criminal Court should not order compensation where there is no means to pay. See the
9 case of *R v York*⁹.



10
11 **COUNT 2 – CAUSING GRIEVOUS BODILY HARM**

12
13 89. The Court is mindful that the offence of Causing Grievous Bodily Harm charged in Count 2 has
14 already been taken into account as an aggravating factor for the offence in Count 1 and that there
15 should not be double counting.

16
17 90. Were this a standalone offence, under the *Guidelines* it would be one of Greater Harm, because
18 the injuries received are serious in the context of the offence and Lower Culpability because of
19 the lack of premeditation. The starting point would be 3 years custody with a sentence range of
20 2 to 4 years custody. Taking into account the aggravating factor of the presence of others, the
21 mitigating factors and the 25% discount this Court would have imposed a sentence of 25 months
22 imprisonment. However, in light of the sentence on Count 1, no separate penalty is imposed on
23 Count 2.

24
25 **CONCLUSION**

26
27 91. The sentence is therefore 57 months imprisonment. Any time served is to be taken into account.
28

⁹ [2019] 1 Cr App R (S) 41

1 92. During his time in custody the defendant is to receive the treatment recommended by the
2 Probation Officer referred to above. The defendant is disqualified from driving for a period of 5
3 years following his release from custody.
4

5 **Dated this the 8th February 2024**

A handwritten signature in blue ink, consisting of a series of connected loops and curves, positioned above the name of the judge.

6
7 **The Hon. Justice Cheryll Richards KC**
8 **Judge of the Grand Court**