



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

3 **INDICTMENT NO: 54 OF 2021**

4
5
6
7
8 **THE QUEEN**

9
10 **V.**

11
12 **LEVAR ANTONINE WOOD**

13
14 **Appearances:** **Mr. Greg Walcolm for the Prosecution**

15 **Mr. Richard H. Barton for the Defence**

16
17 **Before:** **The Hon. Justice Cheryll Richards QC**

18 **Submissions on Sentencing:** **27th May 2022**

19
20 **Sentence Judgment:** **2nd September 2022**

21
22
23
24 **HEADNOTE**

25
26 *Criminal Law-Causing Death by Dangerous Driving- contrary to s.75 of the Traffic Act (2011 Revision)-Cayman*
27 *Islands Sentencing Guidelines-Principles on Sentencing.*
28



SENTENCE JUDGMENT

- 1
2
3 1. The defendant is before the Court for sentencing following his guilty plea to a single offence of
4 Causing Death by Dangerous Driving contrary to s.75 of the *Traffic Act* (2011 Revision). The
5 particulars of the offence are that he on the 1st day of September 2019, drove a Nissan Skyline
6 motor vehicle registration number 182 542 dangerously on a road, namely Bodden Town Road,
7 Anton Bodden Drive and then onto Shamrock Road, Bodden Town, Grand Cayman, Cayman
8 Islands, and thereby caused the death of Giovanni Jerome Berry.
9
- 10 2. The defendant was arrested for the offence on the 6th September 2019. On the 20th November
11 2019, he submitted a prepared statement to the Police. He was bailed to attend the Police
12 Detention Centre on the 8th February 2020. He did not report for bail, instead he left the
13 jurisdiction on the 13th January 2020. He did not communicate with the Police prior to or during
14 his absence from the Islands. He was charged with the offence on the 22nd July 2020, in his
15 absence.
16
- 17 3. On the 10th February 2021, the Summary Court issued an international arrest warrant for him.
18 On the 2nd June 2021, a request for his extradition was made to the United Kingdom. On the 23rd
19 July 2021, the defendant appeared before the Westminster Magistrate's Court in the United
20 Kingdom. He consented to his extradition to the Cayman Islands. By order of the Secretary of
21 State he was returned on the 25th August 2021. He had been in custody in the United Kingdom
22 from June to August 2021. He appeared in the Summary Court on the following day 26th August
23 2021 when the charge was transmitted to the Grand Court.
24
- 25 4. The defendant's first appearance in the Grand Court was on the 3rd September 2021. He was
26 arraigned and entered a plea of not guilty. A trial date was set for the 11th October 2021.
27
- 28 5. This date was vacated to await the defence expert's report on accident reconstruction and to allow
29 for review of that report by the prosecution's experts. A new trial date was set for November
30 2021. Shortly after the new trial date was set the defendant indicated that he wished to be re-
31 arraigned. He was re-arraigned on the 24th November 2021 and entered a plea of guilty to the
32 offence.
33
34



1 **MAXIMUM PENALTIES**

- 2
- 3 6. By s.75 (2) of the *Act*, the maximum sentence for this offence is 10 years imprisonment together
4 with an automatic disqualification of a minimum of 5 years. By s.75 (3) the period of
5 disqualification may run from either the date of conviction or the date of expiration of a sentence
6 of imprisonment. The driver's license of the offender may also be endorsed. Additionally, the
7 prosecution invites the Court to consider making an order that the defendant be re-tested for his
8 driving license at the end of any period of disqualification.

9

10 **SUMMARY OF FACTS**

- 11
- 12 7. The prosecution has provided a summary of the facts which is set out below.
- 13
- 14 8. On the 1st September 2019 the defendant was seen by the Police as he drove a blue Nissan Skyline
15 motor vehicle registration number 182 542 along Bodden Town Road. His front seat passenger
16 was the deceased, Mr. Berry. Bodden Town Road in the vicinity of the Everglo Bar is a 30 mile
17 per hour ("mph") zone. The defendant drove past this area at a high rate of speed. The police
18 officers who were in a marked service vehicle in the parking lot of the Bar noticed this. They
19 turned on their emergency lights and followed the defendant's vehicle with a view to stopping
20 him.
- 21
- 22 9. The defendant did not stop. He continued to drive at a high rate of speed. He made a right turn
23 onto Anton Bodden Drive in a manner which the officers describe as reckless in that he turned
24 into the lane for oncoming traffic. There were no oncoming vehicles at the time. When he made
25 the turn his speed was estimated to be 43.26mph in a 30mph zone. He continued travelling on
26 Anton Bodden Drive with the police vehicle travelling behind him.
- 27
- 28 10. Whilst approaching a left-hand bend in the road, the defendant attempted to overtake a line of
29 three vehicles. Having passed the first two vehicles in the line, the defendant collided with the
30 right side of the third vehicle, causing that vehicle to be pushed off the roadway to the left and
31 his own vehicle to go off the roadway into shrubs on the right shoulder, on the opposite side of
32 the road.
- 33



- 1 11. The police vehicle pulled up alongside the defendant's vehicle. However, the defendant
2 continued driving through the shrubbery before re-entering the roadway ahead of the police
3 vehicle and continuing on. At this point the defendant was travelling at an approximate speed of
4 66.32mph in a 30mph zone.
5
- 6 12. The police continued to follow the defendant as he drove over a speed bump ahead of him without
7 braking. Thereafter the police slowed their pursuit of the defendant, having considered the
8 possible risk of harm to other citizens should they continue. As a result, they lost sight of the
9 defendant's vehicle as it travelled further along Anton Bodden Drive and continued onto Condor
10 Road.
11
- 12 13. From Condor Road the defendant turned right onto Shamrock Road heading in the direction of
13 George Town and continued to drive at a high rate of speed. On approaching the right-hand bend
14 in the vicinity of Shamrock Road and Northward Road the defendant lost control of his vehicle.
15 It ran off the roadway and collided with the perimeter wall of a premises in the vicinity of
16 Doubloon Drive. Immediately prior to the collision the defendant was travelling at an
17 approximate speed of 51.67mph. The speed limit in that area was 40mph.
18
- 19 14. The distance between Everglo Bar and Restaurant and Doubloon Drive, along Shamrock Road,
20 is approximately 4 kilometers.
21
- 22 15. The police were advised by citizens that the defendant had travelled towards George Town. They
23 followed in that direction and came upon the collision approximately 16 seconds later.
24
- 25 16. Both the defendant and the deceased received injuries as a result of the collision and were unable
26 to exit the motor vehicle. Persons who witnessed the collision went to assist and saw the
27 defendant in the driver seat and the deceased in the front passenger seat. The defendant was
28 conscious, but the deceased was not.
29
- 30 17. Fire Services attended and assisted both the defendant and the deceased from the vehicle. They
31 were transported to the George Town Hospital. The deceased was pronounced dead at the
32 Hospital on the 2nd September 2019. A subsequent postmortem examination concluded that the
33 cause of his death was as a result of the head injuries which he received during the collision.
34



1 18. While the defendant was at the hospital on the 2nd September 2019, after consulting with his
2 attending physician, the police requested a specimen of blood from him. The defendant was
3 warned that failure to provide this would result in prosecution. He refused to provide a specimen
4 of blood.

5
6 19. The police secured the scene of the collision and the accident reconstruction experts, PS Lenford
7 Butler and Collin Redden began their investigations. They were assisted by the Closed-Circuit
8 Television footage (CCTV) recovered by the police from various areas along the roadway. They
9 each concluded, from their independent analysis of the crash site and the CCTV footage, that the
10 manner and speed of the defendant's driving prior to the first collision and thereafter to the second
11 collision was reckless and dangerous.

12
13 20. The conclusion of Collin Redden¹ is as follows:

14
15 *“This collision occurred as a result of the manner and speed of the Nissan which the driver*
16 *failed to stop for the Police on Anton Bodden Drive, driving on the incorrect side of the*
17 *road overtaking vehicles while [negotiating] the left hand bend which resulted in him*
18 *losing control and impacting the white Audi which he failed to stop at the scene but chose*
19 *to continue running where it impacted a speed limit sign then thru the front yard and across*
20 *the road that leads to the residence and thru the bushes between the utility pole and coconut*
21 *tree and back on to Anton Bodden Drive beside the Police car where he accelerated to*
22 *66.32 MPH when he crossed the parking lot for the Evron Plaza continued out to Shamrock*
23 *Road where he headed west towards town direction.*

24
25 *The Nissan then crosses residence #2855 located at the junction of Northward Road at*
26 *speed in a blur, still being followed by the Police who [were] 16 seconds behind him and*
27 *[were] in the process of negotiating the left hand bend just after the Northward junction*
28 *where the vehicle started to rotate counter clockwise or to the left and then attempted to*
29 *be corrected but then rotated clockwise or to the right and got into a yaw in the vicinity of*
30 *Corella Drive (North Cayman Palms) where the Nissan continued to rotate as it continued*
31 *to sideslip across the center line and across the east bound lane with the vehicle facing in*
32 *a northerly direction until it continued to rotate and sideslip impacting rocks that were on*

¹ Defence Sentencing Bundle Tab 2, page 12.



1 *the edge of the property and the left front rim and tire dug mark thru the dirt and bushes*
2 *and was then rotated facing back east and went rearward and impacted the concrete wall*
3 *with the corner post and fence with a significant force. The area of maximum engagement*
4 *was to the right rear which was significantly compressed inward to the rear door leaving*
5 *parts of the right taillight and bumper cover by the post. The Nissan then rotated counter*
6 *clockwise with left front rim and tire impacted the wall leaving the imprint then rotating*
7 *and coming to final rest facing the wall at an angle.”*

8
9 21. After being released from hospital on the 6th September 2019 the defendant was arrested for the
10 offence of Causing Death by Dangerous Driving. He was bailed to appear for interview on the
11 12th November 2019.

12
13 22. Dr. Clement Von Kirchenheim examined him and on the 14th October 2019, gave his opinion
14 that due to the injuries he suffered he was at that time not fit to be interviewed. In that report Dr.
15 Von Kirchenheim also stated that he had examined the defendant on the 4th September 2019 and
16 found him to be suffering from a post concussive disorder and unfit to provide reliable evidence
17 due to significant neurological impairment affecting his mood, memory and reasoning.

18
19 23. The interview was rescheduled for the 20th November 2019. Dr. Von Kirchenheim provided a
20 further opinion on the 14th November 2019 in which he stated that the defendant was now fit to
21 be interviewed. He was also of the opinion that the defendant did not have any memories around
22 the exact time of the incident as a result of the injuries he sustained. According to the Doctor, he
23 was then still suffering from cognitive impairment affecting verbal/auditory, immediate and
24 intermediate memory.

25
26 **VICTIM IMPACT STATEMENTS**

27
28 24. The Court has been provided with two victim impact statements. Kerry Allen was a girl friend
29 of Mr. Berry. In her statement dated 26th November 2021, she states that they had been close for
30 almost eight years and grew up together. She describes the void left behind in her life because
31 of his absence and what she describes as a future which will no longer contain the
32 accomplishments which they had dreamt of achieving together.



1 25. Belinda Joseph is the mother of Mr. Berry. She details the impact of the news of his involvement
2 in a serious motor vehicle accident, the pain in her heart when there was no hope for his recovery
3 and dealing with the subsequent reality of his absence. The loss is irreplaceable. She states: -

4
5 *“The most difficult part of this journey for my family and I was the final day when he was*
6 *placed in that cold tomb and then the final seal, which convinced me that we would never*
7 *be seeing Giovanni again.*

8
9 *This has greatly affected the mental wellbeing of his siblings, who too have suffered from*
10 *stress, headaches, depression and difficulty sleeping at nights, in addition to challenges*
11 *focusing at school amongst other things.*

12
13 *I regularly visit my son’s grave site, each time wishing that it was only a dream, however*
14 *the reality of Giovanni’s passing becomes more real to me when there are no answers to my*
15 *phone calls and messages. This brings much sadness, and anger at the selfish actions taken*
16 *by Mr. Wood that night that resulted in the death of my son.”*

17
18 **SOCIAL INQUIRY REPORT**

19
20 26. The Department of Community Rehabilitation has provided a Social Inquiry Report (“SIR”)
21 dated 14th March 2022. This gives significant detail about the defendant and his circumstances.

22
23 27. The defendant is now 27 years old. He has two young children aged 11 and 9 years old. Both
24 reside in other jurisdictions and the defendant provides financial support whenever he is able to
25 do so. His childhood and early years were in a loving and supportive home environment. After
26 leaving school he trained as a pilot in the United States. On his return to the Cayman Islands, he
27 was not able to obtain work in this field and so sought work in other areas such as construction
28 and as a barber.

29
30 28. His Pastor who has known him from age seven years describes him as having a quiet personality,
31 respectful and as responding well to instruction. A neighbour who has known him for fifteen
32 years describes him as a good person, respectful and responsible.



1 29. The defendant recounted to the Probation Officer that he has no memory of the incident other
2 than waking up in the hospital. He said that he had left the Island for medical attention and had
3 been unable to return because the airport was closed due to the COVID-19 pandemic.

4
5 30. He describes Mr. Berry as his closest friend and expressed what appeared to the Officer to be
6 genuine remorse at the loss of his friend.

7
8 31. The defendant was assessed using the LS/CMI Instrument. His overall risk of re-offending was
9 assessed as low, with no criminogenic factors in the high or very high categories.

10
11 32. Under, 'Assessment /Evaluation', the Officer describes him as having supportive family
12 members and as having already begun the process of rehabilitation. Whilst in Prison on remand,
13 he has enrolled in two rehabilitation programmes and is studying CXC Business Studies.

14
15 **ANTECEDENT HISTORY**

16
17 33. The defendant has an antecedent history of three previous traffic convictions.

18
19 34. On the 28th August 2017 he was convicted of the offence of Driving Under the Influence. He was
20 sentenced to a fine of \$200.00 or 20 days imprisonment and disqualified from driving for a year.
21 For the offence of Careless Driving, he received a similar fine and his driver's license was
22 endorsed.

23
24 35. On the 4th April 2018 he was convicted of a second offence of Careless Driving. He was sentenced
25 to a fine of \$150.00 or two weeks imprisonment and his driver's license was endorsed.

26
27 **LEGAL PRINCIPLES**

28
29 36. Prosecuting Counsel has provided a schedule of unreported and reported cases with respect to
30 sentences imposed for the offence of Causing Death by Dangerous Driving in this jurisdiction



1 over a period of time.² The sentences imposed range from 18 months to 6 years and relate to a
2 broad range of circumstances.

3
4 37. Both Counsel have noted that these cases pre-date the *Cayman Islands Sentencing Guidelines*
5 and would therefore have been reviewed in the course of the preparation of the *Guidelines*. This
6 Court is also mindful that each case must be considered on its own particular facts. Two of the
7 cases listed are referenced below for the general statements made therein.

8
9 38. In the case of *Nairne v. R.*, the Cayman Islands Court of Appeal (“CICA”) dismissed the appeal
10 of the Appellant against his sentence of six years imprisonment for the offence of Causing Death
11 by Dangerous Driving. The Court held that the sentence was not manifestly excessive. The
12 appellant’s driving had been quite exceedingly dangerous. He had driven at 100mph on a major
13 road for a prolonged period. Just prior to the collision which caused the death of his girlfriend
14 who was his passenger, he was travelling at 127mph.

15 39. The Court considered the *United Kingdom Sentencing Guidelines* and the approach to
16 Guidelines and stated:

17
18 *“It was a common mistake in the application of sentencing guidelines to assume that once*
19 *a series of factors was sufficient to place an offence within the guideline category, those*
20 *factors became irrelevant in the application of the sentence bracket within that category.*
21 *It would not be double counting to take account of the factors as relevant both to the*
22 *determination of the category and the appropriate position of the offence within the*
23 *sentencing bracket. In the present case, the judge had been entitled to take the view that*
24 *the case was of such seriousness as to warrant a starting point greater than the basic tariff,*
25 *or the starting point suggested by the *Cooksley* or England and Wales guidelines.”*

26
27 40. In the case of *Domladis v. R.*, the appellant had been sentenced following his guilty plea to the
28 offence of Causing Death by Dangerous Driving to a sentence of four years imprisonment. After
29 consuming alcohol, he had driven at a speed twice the speed limit in a built up area of George
30 Town. While racing with a friend and attempting to overtake on the wrong side of the road, he

² *Nairne* [2018] (1) CILR 518 2019 CICA, *Domladis* [2016] (1) CILR N17 (CICA), *Piercy* [2014] (1) CILR N7 2014, *Brookes-Dixon* [2012] (1) CILR N14, *Morgan* [2011] (2) CILR N8, *Carter (H)* [2010] (1) CILR N6, *Cayasso* [2008] CILR N14, *Terry* [2002] CILR N17 (CICA), *O’Donoghue* [1998] CILR 362 (CICA), *Rivers* [1988-89] CILR 77 CICA, *Ebanks* [1984]. *Mohammed* [2000] CILR 400



1 crashed into the vehicle of his friend killing him. The Grand Court applied the *United Kingdom*
2 *Sentencing Guidelines* and concluded that this was a Level 1 offence. The Appellant argued on
3 appeal that it was properly a Level 2 offence. The Court held that the categorisation of the trial
4 judge was correct and that the sentence imposed was not manifestly excessive. The Court stated
5 that: -

6
7 *“Dangerous driving would constitute a Level 2 offence if it created a substantial risk of*
8 *danger to others (e.g. driving at a greatly excessive speed or racing other drivers). The*
9 *appellant’s driving, however, had clearly constituted a Level 1 offence, as it demonstrated*
10 *a deliberate decision to ignore, or a flagrant disregard for, the rules of the road and an*
11 *apparent disregard for the danger caused to others. Although racing or competitive driving*
12 *might be categorized as a Level 2 offence if it occurred on a motorway or dual*
13 *carriageway, it was more serious when it occurred in an area such as central George*
14 *Town.”*

15
16 41. Prosecuting Counsel also drew the attention of the Court to the judgment of the CICA in the case
17 of *Cayasso v R*³. The Appellate Court confirmed in that judgment that pursuant to s.22 of the
18 *Penal Code* a Court is not entitled to suspend any term of imprisonment in relation to an offence
19 of this nature.

20 21 **THE SUBMISSIONS**

22
23 42. In the instant case, both Counsel focused their submissions on the *Cayman Islands Sentencing*
24 *Guidelines*. There is disagreement as to whether this offence is a Level 1 or Level 2 offence.

25
26 43. The Guidelines provide that a Level 1 offence is the most serious offence. It involves a deliberate
27 decision to ignore or a flagrant disregard for the rules of the road and an apparent disregard for
28 the great danger being caused to others. The culpability is high and the *Guidelines* state that such
29 offences are likely to be characterised by the following: -

- 30
31
- “a prolonged, persistent or deliberate course of very bad driving and or
 - consumption of alcohol or drugs leading to gross impairment or
- 32

³ CICA 1 of 2008 dated 14th August 2008



- a group of determinants of seriousness which in isolation or smaller number would place the offence in level 2.”

44. The note to the *Guidelines* states: -

“Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.”

45. Under effect of alcohol or drugs, one example of a determinant is failure to supply a specimen for analysis.

46. The starting point for a Level 1 offence is 7 years imprisonment with a range of sentence of 6-10 years imprisonment.

47. Level 2 is driving that created a substantial risk of danger. The culpability is medium and is likely to be characterised by greatly excessive speed, racing, gross avoidable distractions, driving under the influence or a group of determinants which in a smaller number or isolation would place the offence into category C or Lesser Culpability.

48. The starting point for a Level 2 offence is 4 years custody with a range of sentence of 3 to 6 years.

49. The Prosecution submits that under these *Guidelines*, the instant offence is a Level 1 offence of High Culpability. It is said to be one in which there was a prolonged, persistent, or deliberate course of very bad driving. Counsel argues that the manner of the defendant’s driving was deliberate. He ignored the rules of the road and showed an apparent disregard for the danger which may have been caused to others.

50. Counsel submits that the distance driven by the defendant was 4km from when he was first seen by the police to where the collision occurred in the vicinity of Doubloon Drive. Counsel says that while attempting to evade the police, the defendant: -

- drove in excess of the speed limit;
- made a reckless turn onto the wrong side of the road;



- 1 • overtook a line of traffic;
- 2 • collided with a vehicle without stopping;
- 3 • drove on to the soft shoulder of the road on the opposite side of the road;
- 4 • travelled at speed over speed bumps;
- 5 • accelerated in excess of the speed limit along Shamrock Road, a main road; and
- 6 • failed to properly negotiate a left-hand bend in the roadway.

7

8 51. Defence Counsel submits with respect to the three levels of seriousness that this is a Level 2
9 rather than a Level 1 offence as the prosecution submitted. Defence Counsel said that there is no
10 evidence of any issue as to the roadworthiness of the vehicle. Referring to the heading in the
11 **Guidelines**, 'Effect of Alcohol or Drugs', Counsel submits that there is no evidence of impairment
12 due to alcohol and that while the defendant refused to provide a specimen of blood, he did indicate
13 that he would provide urine or breath. This is recorded in the statement of PC Vadely Gordon.

14

15 52. Counsel argues that: -

16

17 *“The only relevant factors present in this case that can be attributed to the culpability of*
18 *Mr. Wood’s behavior are the sustained course of what may be regarded as very bad driving*
19 *and the aggressive driving which ultimately resulted in the collision with an Audi motor*
20 *vehicle registration number 196 621 (the “Audi”) on Anton Bodden Drive.”*

21

22 53. Counsel reminds the Court that the presence of a determinant of seriousness does not
23 automatically dictate the bracket into which an offence is placed and submits that the presence
24 of speed in this case is not sufficiently serious to justify placing the offending into Level 1.

25

26 54. Counsel submits that while it is accepted that the defendant did travel at an excessive speed and
27 that at one point, he was travelling at 66.32mph, double the speed limit for that area, the defendant
28 was reducing his speed at various points. In particular, at the time of the collision his speed was
29 51mph, only 11 miles above the speed limit in that particular area. He had by then reduced his
30 speed considerably. Counsel submitted:-

31

32 *“47. At the time of the offence the designated authorized speed limited on Anton Bodden*
33 *Drive was 30mph. According to the report by Sergeant Lenford Butler (the “Butler*



1 *Report”)*, the Nissan travelled a minimum average rate of speed at 43.26mph (Tab
2 3).

3
4 48. *This calculation is consistent with the Redden Report which also estimates the*
5 *speed travelled by the Nissan on Anton Bodden Drive to be 43.26mph, having*
6 *reached a maximum of 66.32mph.*

7
8 49. *The speed limit on Shamrock Road on 1 September 2019 was 40 mph. The Butler*
9 *Report calculated the minimum average rate of speed to be at 51.67mph. The*
10 *Redden Report also calculated the average rate speed at approximately 51.82mph*
11 *as the Nissan travelled along Shamrock Road.”*

12
13 55. Counsel submits that in the alternative the mitigating factors are such as to reduce the culpability
14 of the defendant to Level 2.

15
16 **AGGRAVATING FACTORS**

17
18 56. The prosecution submits that the aggravating factors are that the defendant refused to provide a
19 specimen for analysis and his three previous convictions for driving offences. Counsel for the
20 defence questions whether there had in fact been a refusal, arguing that the defendant had been
21 willing to provide a specimen by means other than blood.

22
23 **REDUCTION FOR PLEA**

24
25 57. Prosecuting Counsel submitted that the Court would need to consider and balance three factors
26 in order to determine the appropriate discount: -

- 27
28 “a. *The defendant’s absence from the jurisdiction during the investigation stage and*
29 *the laying of charges and the reasons for his absence;*
30 b. *The efforts of the Crown to bring the defendant before the Court, i.e., the*
31 *extradition from the UK; and*
32 c. *The effect of the injury on the defendant, memory loss relating to the commission*
33 *of the offence, and how this impacted on the decision to enter a guilty plea at the*
34 *particular stage of the matter.”*



1 58. Defence Counsel in response urged the Court to apply the full 25% reduction recommended by
2 the *Cayman Islands Sentencing Guidelines* as appropriate after a trial date has been set. Counsel
3 submitted that the plea of not guilty which was entered on the 23rd September 2021 was made on
4 the basis of a preliminary expert's report obtained by the defence. The plea of guilty was entered
5 following the receipt of the completed report.
6

7 **SUBMISSIONS IN MITIGATION**

8

9 59. In mitigation, defence Counsel reviewed the four mitigating factors listed in the *Guidelines*.
10 Under the heading, actions of others, Counsel submitted that based on the defence expert's report
11 this is a potential mitigating factor but is not one which the defendant wishes to advance⁴.
12 However, Counsel asked the Court to consider whether the fact that the police car followed the
13 defendant's vehicle and the effect upon him, is a relevant circumstance. Secondly, Counsel said
14 that while it is not made as a positive submission, the statement of witness Kimberly Brown
15 suggests that there may have been another vehicle present at the scene at the material time.
16

17 60. Counsel was asked directly by the Court and in response confirmed that there is acceptance of
18 what is set out in the accident reconstruction expert reports of the prosecution and in particular
19 at paragraph 10 of the prosecution's summary of facts which states:
20

21 *"The police, having been advised by citizens that the defendant had travelled towards*
22 *George Town, followed in that direction and came upon the collision approximately 16*
23 *seconds later."*
24

25 61. In personal mitigation Counsel provided the defendant's written apology to the Court. The
26 defendant states that he takes full responsibility for what happened and would trade places with
27 Mr. Berry who was more like a brother than a friend. The defendant asks for forgiveness for the
28 pain that his actions have caused and says that he will be haunted with this guilt forever. Counsel
29 said that the defendant is prepared to reach out to the family of Mr. Berry and upon release from
30 Prison, plans to do what he can to advocate and provide lectures about his experience. Counsel
31 said that there is utility in life after rehabilitation and that the defendant is preparing himself to
32 be a better person.

⁴ Paragraph 53 c. Defence written submissions and oral submissions made.



1 62. Counsel referred to a number of matters including the SIR as evidencing the good and productive
2 life which had been led by the defendant up to the material time and his genuine remorse. Counsel
3 noted that in his prepared statement to the police, the defendant spoke of being distraught after
4 hearing that he had been involved in the accident and said that Mr. Berry was his best friend.
5

6 63. Character references provided from his Pastor who has known him for nineteen years and a
7 member of the community who has known him for ten years, speak well of him. He is described
8 as an ambitious young man, respectable and loved by many, honest, dependable and of gentle
9 disposition.
10

11 64. The medical effect of the collision upon the defendant was advanced as a significant factor in
12 mitigation. Counsel reviewed the letters of Dr. Von Kirchenheim who had examined him shortly
13 after the collision and had concluded as set out above that he had lost his memory of what
14 occurred. Counsel sought and was granted permission to provide further medical material after
15 the sentence hearing.
16

17 65. On the 10th June 2022, Counsel provided additional medical records for the defendant. These are
18 from the Health Services Authority. They are the Emergency Physician notes for the defendant
19 for the 1st September 2019. Under the heading, chief complaint, it is recorded that the defendant
20 reported that his air bag had deployed, and he hit his head. The defendant was seen to have a 7cm
21 laceration to the occipital region of the scalp on the left side, bruises to the left forearm, laceration
22 to the right elbow and a bruise to the right side of his nose. The wound to his head was cleaned,
23 closed with a stapler and dressing applied. The wound to the elbow was cleaned and closed with
24 a stapler. No intra or extra-axial haemorrhage or fractures were seen and no acute injuries.
25

26 66. The notes of the Emergency Medical Services record that at the scene the defendant's pupils were
27 dilated and sluggish. He gave an account that he had swerved from an oncoming vehicle and hit
28 a fence. He stated that he had a couple of beers before he was driving.
29

30 67. The notes of Dr. Von Kirchenheim signed as at 4th September 2019 are also attached and state: -
31

32 *“Patient seen with parents for the initial interview and then underwent brief*
33 *neuropsychological testing. Results indicate that he has impairment with orientation,*
34 *auditory immediate and intermediate memory, and visual-spatial skills were also affected.*



1 *He is clearly distraught with feelings of guilt and loss. There are also reported marital*
2 *issues. No evidence of suicidal or homicidal ideation. Moreover, there was no evidence*
3 *of symptoms suggestive [of] a major psychiatric disorder TBS in 2 weeks.”*
4

5 68. In addition to the physical injuries which he sustained and the loss of his memory, defence
6 Counsel asked the Court to consider the following matters in mitigation:-
7

- 8 i. Loss of his best friend which will likely affect him for the rest of his life.
- 9 ii. Loss of his livelihood as a pilot. He will not likely be able to obtain employment in
10 this field in the future given his conviction for this offence.
- 11 iii. He had become separated from his wife following the accident which placed a strain
12 on his marriage.
- 13 iv. He will not be able to provide for his family.
- 14

15 69. Counsel said that it is agreed that the offence passes the custody threshold but asked the Court to
16 balance all factors. Counsel also said that the defendant did not contest his extradition and asked
17 that account be taken of the entire period that he has spent on remand including the period in the
18 United Kingdom.
19

20 **THE SENTENCE**

21

22 70. The custody threshold is firmly passed in this matter given the serious nature of it. As the
23 *Guidelines* note all offences which have resulted in death have the highest level of harm. The
24 defendant travelled at excessive speeds. At one stage more than twice the speed limit. Mr.
25 Redden’s report describes the defendant’s vehicle as passing the cameras in a blur. These were
26 main roads with bends, some sharper than others. Significantly this is not a case involving speed
27 alone. This is also a case in which the defendant drove some 4km or 2.4 miles after being signaled
28 to stop by the police. He ought to have stopped immediately. He did not. He could have chosen
29 to stop at any point. He did not. He made a right turn onto Anton Bodden Drive using the wrong
30 side of the road. Fortunately, there were no oncoming vehicles at the time. He overtook a line of
31 cars and collided with the third in line, the Audi motor car. He ran off the road to the opposite
32 side in the shrubs. He came out just ahead of the police vehicle. After this first collision, he could
33 have chosen to stop. He did not. He continued at a speed which led to him losing control of his
34 vehicle.



1 71. Implicit in the way his case has been put is that he still sought to blame the police. This is at least
2 for the fact that he was being followed, if not for hitting his vehicle. He cannot go as far as the
3 latter in light of the CCTV evidence which clearly shows when the police vehicle arrived at the
4 scene and the timing in between that and the collision. The Court does give consideration to the
5 fact that he was being followed by the police car, but this is not a consideration which is in his
6 favour. Drivers are to stop when signaled by the police to do so⁵. The fact that he was being
7 followed by the police means that he could have been in absolutely no doubt that he was being
8 requested to stop. His manner of driving was deliberate in seeking to evade the police even after
9 he had been in an accident with another road user.

10
11 72. In this Court's view this offence may properly be described as one encompassing driving that
12 involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an
13 apparent disregard for the great danger being caused. This was a prolonged, persistent or
14 deliberate course of very bad driving and on this determinant alone, the culpability is high,
15 causing this offence to be at Level 1.

16
17 73. Counsel invited the Court to give the defendant the benefit of the doubt in relation to the alleged
18 failure to provide a specimen of blood. Counsel referred to the statement of PC Vadely Gordon
19 dated 1st September 2019 and to two extracts therein. The full portion of the statement is set out
20 below: -

21
22 *"I went back [to] Doctor Booth and asked if it was OK to wake Mr. Wood and he told a*
23 *nurse to check to see if Mr. Wood was asleep, she did and reported that he was not asleep.*
24 *I asked Mr. Wood if he was the driver of the vehicle at the time of the collision and he said,*
25 *yes. I asked if he had anything alcoholic to eat or drink prior to driving and he said "YES*
26 *BUT IT HAD NOTHING TO DO WITH THE ACCIDENT. IT WAS THE POLICE*
27 *CHASING A VEHICLE THAT CRASHED INTO MY VEHICLE". I informed him that*
28 *based on the nature of the accident I required from him to supply a specimen of blood for*
29 *the purpose of analyzing the level of alcohol and at 3:00 am he said, HE WILL NOT GIVE*
30 *ANY BLOOD BECAUSE HE ALREADY HAD NEEDLES IN HIS HAND AND HE WILL*
31 *GIVE URINE OR BREATH BUT NO BLOOD. I informed him that if he failed or refuse to*
32 *provide the specimen, he will be liable to prosecution, and cautioned him and he replied,*
33 *"I AM NOT GIVING ANY BLOOD BECAUSE THE LAST [TIME] I GAVE BLOOD THE*
34 *POLICE SAID THAT I WAS OVER THE LIMIT AND ARRESTED ME WHEN I HAD*
35 *ONLY TWO BEERS TO DRINK".*

36

⁵ See s.68 (e) of the Traffic Act



1 *I went back to Doctor Booth and spoke to him about Mr. Wood decision to provide urine*
2 *and breath. Doctor Booth spoke to Mr. Wood at 3:06 am and informed him that he need to*
3 *undergo an [extra] before he can be allowed to leave the hospital to provide the breath*
4 *specimen.*

5 *Mr. Wood refused to provide a specimen of blood and was warned of intended prosecution*
6 *and I informed PS 50 Montaque of Mr. Wood's decision and refusal."*

7
8 74. It is noted that the defendant was told that he needed to undergo an x-ray before he could leave
9 the hospital. It was clear that he would not be in a position to leave the hospital immediately. He
10 was asked to provide a specimen of blood. He refused even after being warned. He chose to
11 refuse and cannot now say that this was not a refusal as he would have provided it by other means.
12 However, even giving him the benefit of the doubt and excluding this factor as a determinant, the
13 offending still falls within Level 1 for the reasons set out above.

14
15 75. From a starting point of seven years (84 months), the single aggravating factor which will be
16 taken into account is that of his three previous convictions, one for Driving Under the Influence
17 and two for Careless Driving. Defence Counsel accepts that there is disregard of warnings in this
18 case which might properly constitute an additional aggravating factor. However, in the Court's
19 view care must be taken to avoid double counting and it is considered that this factor may already
20 be reflected in the way in which the Court has categorised this as a *deliberate* course of driving.
21 His evasion of and flight from the police are closely linked to the manner of his driving.

22
23 76. The sentence is increased by five months to ninety months in light of the defendant's previous
24 driving convictions, (three months for the offences committed on the 28th August 2017 and two
25 months for the offence committed on the 4th April 2018).

26
27 77. In mitigation the Court takes into account all the submissions and all that has been said and
28 written in favour of the defendant.

29
30 78. From the early statements made by the defendant the inference is simply inescapable that he
31 initially sought to blame the police for the collision. Perhaps it is the case that but for the CCTV
32 footage along the roadways this may well have continued to be the case.

33
34



1 79. The defendant seeks to explain his departure from the Cayman Islands as due to the need to seek
2 medical treatment. If this was the case it is inexplicable that he would not have made contact with
3 the police before or after he had done so and certainly during the eighteen months before he was
4 held in the United Kingdom in June 2021. The reasonable inference is that he fled the jurisdiction.

5
6 80. Both these are matters which are inconsistent with genuine remorse and acceptance of
7 responsibility.

8
9 81. Nevertheless, this Court gives the defendant the benefit of the doubt and accepts that whatever
10 may have been his initial position, he has now come to a place where he is genuinely remorseful
11 and genuinely accepts responsibility for the collision.

12
13 82. Thus, the factors taken into account in mitigation include the following. He is genuinely
14 remorseful and takes full responsibility for his actions. He has suffered some injury as a result of
15 the collision and has lost his best friend. He has good personal qualities as described by persons
16 who know him well and led a productive life before the incident. This has impacted his marriage
17 and will likely impact his ability to work in the profession for which he is trained. He has already
18 made earnest efforts towards rehabilitation by enrolling in courses at the Prison and is using his
19 time there productively by doing other studies.

20
21 83. The Court considers all the matters in mitigation as a whole but is mindful of the *Guidelines*
22 which states: -

23
24 *Effects on Offender*

25 “(b) 1. *Injury to the offender may be a mitigating factor when the offender has suffered*
26 *very serious injuries. In most circumstances, the weighting it is given will be*
27 *dictated by the circumstances of the offence and the effect should bear a direct*
28 *relationship to the extent to which the offender’s driving was at fault – the greater*
29 *the fault, the less the effect on mitigation; this distinction will be of particular*
30 *relevance where an offence did not involve any fault in the offender’s, standard of*
31 *driving.*

32
33 2. *Where one or more of the victims was in a close personal or family relationship*
34 *with the offender, this may be a mitigating factor. In line with the approach where*
35 *the offender is very seriously injured, the degree to which the relationship*
36 *influences the sentence should be linked to offender culpability in relation to the*

1 *commission of the offence; mitigation for this reason is likely to have less effect*
2 *where the culpability of the driver is particularly high.”*
3

4 84. Having reviewed the medical notes, while the loss of memory is serious, the Court’s view is that
5 the other injuries suffered by the defendant cannot be said to fall into the category of “very serious
6 injuries.” Additionally, while he has lost his best friend and this is an important factor in
7 mitigation, his culpability is also high which makes this factor of less effect.

8
9 85. All the mitigating factors taken together serve to reduce the sentence by eight months from
10 eighty-nine months to eighty-one months.

11
12 86. The submissions of the defence are accepted as to the possible discount for the guilty plea and
13 the defendant is afforded the full 25% discount recommended by the *Guidelines*. It is noted that
14 his memory loss would very likely have played a role in his approach to the case.

15
16 87. This serves to reduce the sentence from eighty-one months by 25% (or 20.25 months) to one of
17 60.75 months or five years imprisonment.

18
19 88. Time served including time while in custody in the United Kingdom is to be deducted.
20

21 89. The defendant is disqualified from driving for five years following his release from Prison and
22 his license is to be endorsed.
23

24 **Dated this the 2nd day of September 2022**

25 

26 **The Hon. Justice Cheryll Richards QC**
27 **Judge of the Grand Court**