

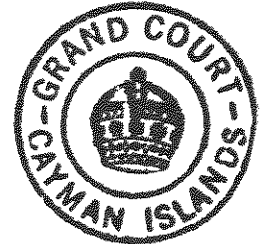
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

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4 **INDICTMENT NO: 0017/2012**

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6 **REGINA**

7  
8 **V.**

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10 **DORLISA GAVRILLA PIERCY**



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13 **Appearances:**

**Mrs. Tanya Lobban-Jackson of the Office of  
the Director of Public Prosecutions for the  
Crown**

**Ms. Lucy Organ of Samson & McGrath for  
the Defendant**

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20 **Before:**

**Honourable Madam Justice Beswick (Actg.)**

21  
22 **Trial:**

**20<sup>th</sup> – 24<sup>th</sup> January & 28<sup>th</sup> January – 1<sup>st</sup>  
February 2014**

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27 **JUDGMENT**

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30 1. Ms. Dorlisa Gavrilla Piercy is charged on an indictment for causing death by  
31 dangerous driving contrary to s.67 (1) of the Traffic Law (2003 Revision). The  
32 particulars are that Dorlisa Gavrilla Piercy, on Sunday the 14<sup>th</sup> day of August 2011,  
33 drove a Toyota Altezza motor car registered 141188 on Seaview Road, in the  
34 vicinity of Half Moon Bay, East End, Grand Cayman, dangerously, having no  
35 regard to the manner of driving, thereby causing the death of Karen Imonie  
36 Edwards. Ms. Piercy has pleaded Not Guilty to the charge.

1 2. I remind myself at the outset that the defendant has no duty to prove that she is not  
2 guilty rather it is the prosecution who must satisfy me so that I am sure of her guilt,  
3 before I can find her guilty. The prosecution relied on several witnesses in proving  
4 its case.

***THE CROWN'S CASE***

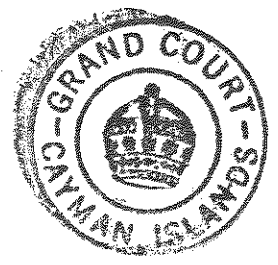
***THE EVIDENCE***

***Ms. OLIVIA (PRISCILLA) SMITH***

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10 3. Ms. Olivia Smith testified that it was her car in which the deceased had been  
11 travelling as a passenger when she met her death on Sunday, the 14<sup>th</sup> August 2011.  
12 Ms. Smith testified that at the time of the incident the defendant had been driving  
13 the car.

14  
15 4. Ms. Olivia Smith gave evidence that on that fateful Sunday, she had driven three of  
16 her lady friends to Rum Point, on the north of the island. They eventually left Rum  
17 Point at about 5:00 p.m. However, one of those friends did not return with her.  
18 That left space in Ms. Olivia Smith's car, so that when Ms. Karen Edwards, now  
19 deceased, asked for a lift, Ms. Olivia Smith accommodated her. The other persons  
20 in the car were Ms. Tamara Smith and Ms. Dorlisa Piercy, the defendant.

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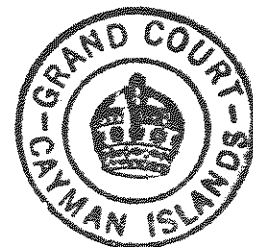


1       5.       Having left Rum Point, Ms. Olivia Smith (who is called Priscilla) drove the car to  
2       the East End to purchase fish at a fish stand and also to allow the defendant to meet  
3       with her boyfriend Johnny Bodden, who was at a bar which was steps away from  
4       the fish stand. There was no fish available and the ladies then went to the bar  
5       where Johnny Bodden was and spent roughly 20 minutes there.

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7       6.       According to Ms. Priscilla, as the ladies were approaching her car, about to leave  
8       East End, the defendant took the car keys from her and said she wanted to drive.  
9       Ms. Priscilla testified that she was fine with that because she herself was tired. She  
10      went into the front passenger seat, and the deceased was behind her. The defendant  
11      was in the driver's seat. Tamara Smith was behind the defendant. Before they  
12      actually drove off, Johnny Bodden left on a bike, along with two of his friends who  
13      were in a car, heading towards George Town.

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15      7.       Ms. Priscilla recounted that she remembers putting her seat back, and putting one  
16      foot on her seat. They were listening to the music of Kartel and someone asked for  
17      it to be started over and turned up. Her next recollection is that of waking up in the  
18      hospital two days later with multiple injuries to her legs, arm and face. Indeed the  
19      admissions showed that Ms. Smith moved from being mildly confused on arrival at  
20      the hospital to becoming alert and oriented and then on the morning after the  
21      accident she did not have a recollection of the accident. She left the hospital about  
22      a month later, unable to walk.

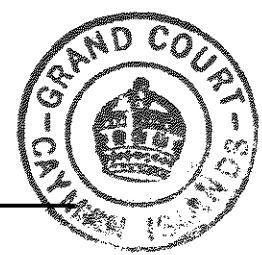
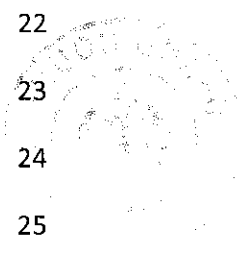
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1           8.       In cross-examination, Ms. Priscilla testified that it had been the defendant's idea to  
2                   go to East End. When they were leaving Rum Point, she had mentioned to everyone  
3                   that she would not be able to drive all the way to East End then to town. She  
4                   testified that Ms. Tamara had said she would drive, but that that was not in her  
5                   police statement because this was the first time she was being asked that question.

6  
7           9.       Ms. Priscilla acknowledged that in her first statement she had said that Karen had  
8                   been seated behind her and Tamara behind the driver. When she met with Crown  
9                   Counsel she had said that the seating that she had described in that first statement  
10                  was wrong. Later however, she realized that her original statement was correct .She  
11                  therefore corrected her statement to its original format to say that the defendant was  
12                  in the driver's seat, she in the passenger seat with the deceased behind her and  
13                  Tamara behind the driver. At the time of making the erroneous change to her  
14                  statement, she testified, she had been nervous and had no lawyer.

15  
16          10.       In cross-examination, Ms. Priscilla testified that on the night of the incident she did,  
17                   in fact, wake up, heard everyone screaming, and then fell asleep for two (2) days.  
18                   At that time, she did not know if Dorlisa were badly injured, nor if Karen had died.  
19                   She does know, however, that Tamara did not tell her to say that Dorlisa was  
20                   driving. The two friends had not discussed the incident because from the start they  
21                   had been told not to talk about it to each other. Ms. Priscilla was adamant that she  
22                   knew who had taken her car keys from her; she knew who had been seated in the  
23                   driver's seat. It was the defendant. As far as she knew, the police had taken swabs  
24                   of the hands that had touched her steering wheel.



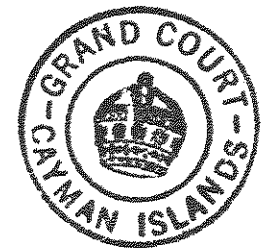
*MS. TAMARA SMITH*

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11. Ms. Tamara Smith, no relation to Ms. Olivia (Priscilla) Smith, testified that she had gone to Rum Point that fateful day with Priscilla, Dorlisa and another lady friend. She knew Dorlisa for a couple months to a year, through Priscilla. She knew Karen and Priscilla for a long time.

12. She testified as to the ladies going to East End and then leaving without the fish that they had wanted. Ms. Priscilla had asked her, Ms. Tamara, if she wanted to drive. Before she could answer, the defendant had said she wanted to drive. Ms. Tamara Smith's evidence was that when they left, the defendant was the driver, and she sat behind her. Karen was in the back seat, behind the front passenger seat where Ms. Priscilla was sitting.

13. The witness, Ms. Tamara, testified that she kept dozing off, and was between sleeping and waking. At one stage, she felt Karen touch her on her left leg. She opened her eye and saw Karen pointing towards the speed gauge. They both asked the defendant to slow down, but she did not respond. The witness does not know if the defendant even heard because of the music being played in the car.

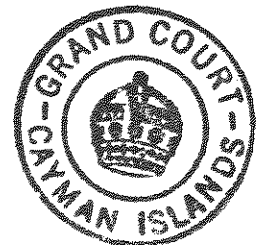


1       14.     The car was going fast and she felt it “kind of” slide off the road about twice. Then  
2             the next thing she remembers is that it went dark and the car was flipping over and  
3             over. All she could do was pray. When the car stopped, she exited through the open  
4             door opposite where she had been sitting and called 911 and other persons. She had  
5             cuts and bruises. She noticed someone taking Dorlisa away. She is not sure who it  
6             was. For her part, her mother came and took her to the hospital.

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8       15.     In cross-examination Ms. Tamara Smith testified that she did not tell the police in  
9             her first statement that after Karen hit her leg, she pointed at the speed gauge.  
10            However, she did tell them that in her later statement about a week before this trial.  
11            Nor did she initially tell the police that Karen had asked the defendant to slow  
12            down. She knows that she had told the police that prior to the car rolling, she had  
13            felt it slip off the road about twice, but she now saw that it was not in the statement.  
14            However, she was not sure if she had checked the statement before signing it. She  
15            testified that her recollection of the incident now is better than it was soon after it,  
16            because now she can sit and think about it clearly, whereas at the time nearer to the  
17            accident a lot of things were happening.

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19       16.     She testified that when she gave her first statement to the police, she was stressed  
20             out – that may have been on August 25<sup>th</sup>, about two weeks after the accident. She  
21             believes that she probably read her statement fast to get over it because it was not  
22             something with which she wanted to deal.

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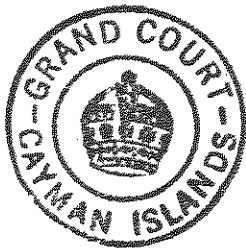
1 17. In further cross-examination she testified that she did not recall the car hitting  
2 anything. When the car stopped she found the quickest way out, which was through  
3 the open left door.

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5 18. Ms. Tamara testified that it was not until she had reached the George Town  
6 Hospital that she learned that Karen had died and that the defendant had been badly  
7 injured. She did not know that the defendant might die nor did she tell Ms. Priscilla  
8 that the defendant might die.

9  
10 19. She and Priscilla did speak about the accident but that was long after she, Tamara,  
11 had already written her statement. Ms. Priscilla had been speaking about her  
12 injuries and they had been marvelling about the fact that the accident had occurred.

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14 20. Cross-examination also revealed that Ms. Tamara has been previously convicted.

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16 21. The ensuing witnesses described a scene of victims strewn in different directions,  
17 suffering from injuries of varied degrees of gravity.



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*Mrs. MITCHELLE MOTSKO AND MR. JOHN MOTSKO*

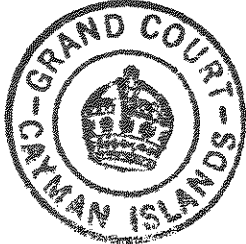
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22. Agreed statements from Mrs. Michelle Motsko and Mr. John Motsko were read into evidence. Mr. and Mrs. Motsko described the loud sound of an impact outside their residence at about 7:20 – 7:30 p.m. on Sunday, the 14<sup>th</sup> August 2011. Mrs. Motsko ran to the actual scene and saw a white car involved in a wreck. She saw several motorcycles around and a dark coloured vehicle. Two males took what appeared to be a lifeless body from the scene. She was unable to say if they had removed it from the vehicle or the ground. She asked them not to take the body away but they ignored her and put the body inside a car and headed towards George Town.

23. Mrs. Motsko noticed a girl lying face down about 10 yards from the wreck appearing to be dead, and a person whom she described as a young man in the front seat who also looked dead. Then the police and fire trucks arrived and took charge of the scene. A nurse then confirmed that the girl on the ground was dead.

24. Both Mr. and Mrs. Motsko’s statements spoke of a female victim with blood on her, speaking on the phone. Mr. Motsko too described an unresponsive female about 15 yards from the crash, and two men carrying a female victim, placing her in a blue sports car and driving off.

25. The first responders to the emergency calls converged on the scene and similarly described it.



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**MR. LINFORD WEBB**

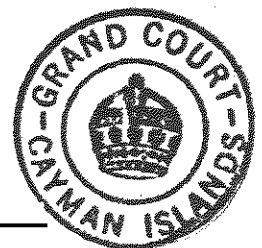
26. Fire Officer Linford Webb's statement was read into evidence. The first injured person he saw had injuries to her face, was crying and appeared hysterical. Another lady, appearing to be pregnant was laying face down about 15 feet from the vehicle. A young lady was trapped between the dashboard and the seat with her legs pinned. She was the only person in the car. He described damage to the front, top and both sides of the vehicle with the two left doors jammed closed.

**PC NORMAN BANFIELD**

27. Police Constable Norman Banfield saw Ms. Priscilla lying in the front left passenger seat with her left leg through the window and the right leg in a bent position towards the dash board. Ms. Tamara Smith was walking around in the crowd and a pregnant female body was in the bushes.

**PC NEVILLE BROWNE**

28. Police Constable Neville Browne testified that he saw Ms. Tamara Smith walking towards the roadside shouting "Get my friend out". He walked to the vehicle and saw in it Ms. Olivia Pricilla Smith in a lying position on the front passenger seat. The seat was not reclined. Her head and back were on the seat and her right leg was bent in front of her. Her left leg was hanging out the window. Both legs were slashed. A lady, who appeared to be pregnant, lay on the ground about 10-15 feet east of the vehicle. She had no pulse. Both victims left in ambulances.



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*PC JERAD EBANKS*

29. Police Constable Jerad Ebanks marked with spray paint, the location where one of the victims had been found.

*JUNIER FERGUSON*

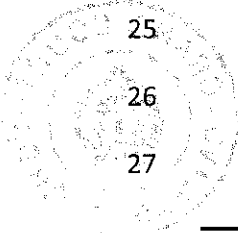
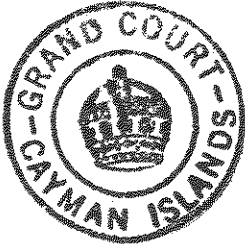
30. It was Junier Ferguson, an Emergency Medical Technician, who testified that he tried to resuscitate the female who was about 15 feet away from a vehicle. She appeared to be about 7 months pregnant and she had no heart beat or pulse.

*PC BILL MCLAUGHLIN*

31. Police Constable Bill McLaughlin's statement was that he had noticed a white bumper on the ground near a tree about 100 to 150 yards from the wrecked vehicle and a motorcycle registered to Johnny Bodden parked on the road across the street from the wreck.

*DR. AMBEKAR*

32. Dr. Ambekar's evidence was agreed. That evidence was that on August 14, 2011 the doctor examined Ms. Olivia Priscilla Smith. She had a fracture of her left leg, laceration to both thighs and left wrist, and, neck injury.



1 *PC BRANDAUGHN PHILLIPS*

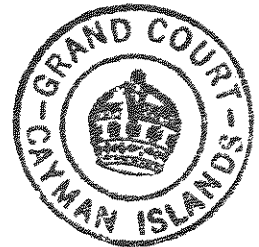
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3 33. Police Constable Brandaughn Phillips' statement was also read into evidence. It  
4 provided information about the scene at the George Town Hospital at about 9:00  
5 p.m. when the victims were brought in. The defendant was the first victim to arrive  
6 by a private car. Shortly after, Karen Edwards arrived in an ambulance and was  
7 pronounced dead with her unborn child. Priscilla was the next victim to arrive at the  
8 hospital. Tamara Smith, yet another victim, was also taken to the emergency room  
9 area. Officer Phillips subsequently arrested the defendant that night on suspicion of  
10 causing death by dangerous driving.

11  
12 *DR. SHRAVANIA JYOTI*

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14 34. Expert evidence came from Dr. Shravania Jyoti, a forensic pathologist. On August  
15 18, 2011, he examined the dead body of Ms. Karen Edwards. Ms. Donna Robb, her  
16 mother, had identified her body. Dr. Jyoti determined that the cause of Ms.  
17 Edwards' death appeared to be multiple blunt trauma injuries to her head, chest and  
18 abdomen. He detailed the injuries and concluded that the predominant injuries  
19 were toward the left side of the body. The third term fetus that she was carrying  
20 was also dead.

21  
22 *P/S LENFORD BUTLER*

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24 35. Then came evidence concerning the accident reconstruction. P/S Lenford Butler  
25 testified as a Traffic Accident Reconstructionist. The Defence challenged his  
26 expertise in this field but did not oppose him giving his opinion.

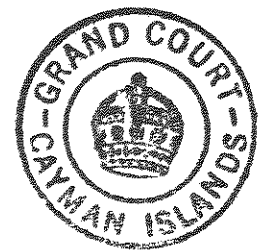


1 36. P/S Butler testified that on August 4, 2011, he went to the site of a fatal accident in  
2 the area of Lover's Wall, East End. The roadway was dry, flat and was a hot mix  
3 asphalt road surface. There were lights in the road but the area where the car rested  
4 was dark.

5  
6 37. There he met P/C Chong and received information from him. He noticed a white  
7 Toyota Altezza on three (3) wheels with the left front wheel missing. That wheel  
8 was on the opposite side of the road in the grass. The car itself was extensively  
9 damaged and there were items from the car including cell phones and purses strewn  
10 along a path. P/S Butler agreed that on the first page of his report dated August 14,  
11 he had recorded the driver's name as Olivia Priscilla Scott. He testified that it was  
12 likely that he had received that information from P/C Chong.

13  
14 38. His evidence continued that he saw two lines coming from off the road shoulder  
15 then going back on the asphalt road then onto the road shoulder. Yaw marks were  
16 on the road surface. These leave diagonal marks and are made by a vehicle whose  
17 wheels are rotating and moving sideways. Left front and rear tracks were on the  
18 road shoulder.

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1 39. Part of the road surface along which the car had travelled was a harsh chip and  
2 spray surface where stone is pressed into tar. That surface was rougher than asphalt  
3 and had been used as a road before Hurricane Ivan. The officer told us that he  
4 noticed a coconut tree on the same side of the road as that old road and saw that it  
5 had fresh damage with big pieces of the tree being missing. He also saw a right  
6 front bumper on that same side. There were skid marks in loose gravel and grass  
7 leading to and from the coconut tree.

8

9 40. According to P/S Butler, the skid marks built up a wedge of sand and gravel at the  
10 front of the car because the car was moving sideways. The wedge then caused the  
11 vehicle to roll because of the speed at which it was going. It rolled and dropped on  
12 its left side onto the hard surface of the old asphalt road.

13

14 41. Sgt. Butler's evidence was that there were gaps on the surface in between the  
15 scrapes and the debris that were undisturbed, showing that the car had been rolling  
16 and tumbling, instead of sliding, to its final resting place. His sketch of the scene  
17 was exhibited.

18

19 42. The officer gave evidence of the measurements he took which had contributed to  
20 his opinions:-

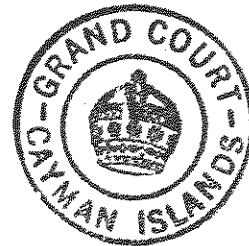
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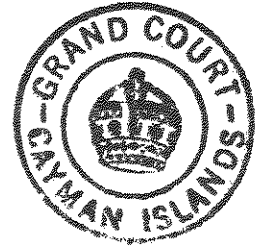
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- a. The distance of the left front wheel from the point of impact, that is, the coconut tree was 219 feet.
- b. The distance of the car from the point of impact; that is, the distance it travelled before stopping was 228 feet 9 inches.
- c. The length of the actual yaw mark was 70 feet. He put a chord by a straight tape from one end of the yaw mark arch to the other.
- d. The middle ordinate of the yaw mark was 9 inches. That was the measurement in the centre of the tape. He went from 35 feet to the mark in the road.
- e. The width of the road was 24 feet 2 inches.
- f. The road shoulder was 12 feet. On the opposite side of the road it was 15 feet.
- g. The road shoulder was 2 inches below the road itself in the bend of the road.



43. From the middle ordinate measurements he worked out the speed. P/S Butler explained that he had calculated the speed of the vehicle on impact with the coconut tree by applying a mathematical formula used by reconstructionists for that purpose. The formula used the critical curve speed and a co-efficient of friction.

44. The officer testified that he did a drag sledge test on the road to measure the co-efficient of friction. This is the rate at which the vehicle will stop when the brakes are applied to the road surface. That drag factor was 0.82%. He also calculated the radius of the road surface from the formula. Speed he calculated as 99.91 miles per hour. His evidence was that the critical curve speed is the maximum speed at which a vehicle can negotiate a bend or a corner. He was of the view that this vehicle had exceeded that speed when negotiating the bend which was in the road. The critical

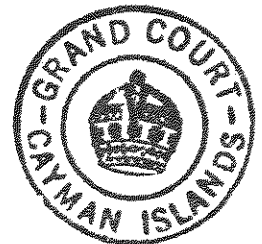
1 curve speed for the right hand bend, he testified, was 110.56 miles per hour. The  
2 speed limit of the road was 50 miles per hour.

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4 45. P/S Butler also agreed that one of the most important pieces of evidence is the mark  
5 on the road from which he calculated the speed of the vehicle. He had used one yaw  
6 mark which starts from the edge of the road and goes to the coconut tree. He  
7 testified that there was one other tyre mark on the scene which was not related to  
8 the accident because it was obvious it did not lead to the coconut tree. However, he  
9 testified it was not until he had met with Crown Counsel the week before the trial  
10 that he actually pointed out the marks he had used in his reconstruction.

11  
12 46. The officer gave further details of the measurement he used to calculate the critical  
13 speed. In measuring the chord of the mark, he used a tape held as tightly as  
14 possible and measured 70 feet from one point to the other and then used another  
15 tape to line up with it as straight as possible to lead to the yaw mark.

16  
17 47. P/S Butler testified that he knows that if the vehicle is in full yaw one must not use  
18 the critical speed formula. The car had in fact gone into full yaw after it had come  
19 off the bend and had gone into the coconut tree but the measurement he took was  
20 not when the vehicle was in full yaw. He was not aware of criticisms of his method  
21 of measurement.

22  
23 48. P/S Butler acknowledged that he could have calculated the speed by measuring the  
24 distance between the car and where the tyre was, but he did not. The 99.91 miles  
25 per hour that he calculated had no margin of error.

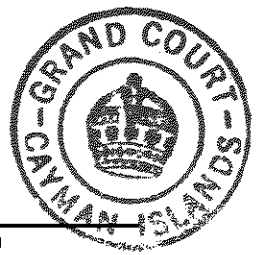


1 49. The issue of his expertise was the first aspect of the cross-examination. He testified  
2 that the entirety of his notes was comprised of four pages. He had been at the crash  
3 site for about 3 to 4 hours but he did not note everything.

4  
5 50. He has been a police officer for 23 years and worked in various countries. In  
6 February 2001, he qualified as a Traffic Reconstructionist and acted as a traffic  
7 reconstructionist and investigator from 2001 – 2003. He dealt with about three fatal  
8 accidents in that time and calculated speed at which the vehicle was going in about  
9 five accidents. He had given evidence in two cases at that time.

10  
11 51. The officer's evidence was that he has been in the Cayman Islands since 2003 but  
12 has not worked entirely with traffic. From that time till now he has dealt with two  
13 accidents in Cayman Brac, and assisted with three in the Eastern District. One was  
14 fatal. He calculated speed in four of them. Earlier in examination-in-chief, he had  
15 testified that he had dealt with over 30 serious and fatal accidents in Cayman and  
16 had testified in more than 30. From 2008, the sergeant has been dealing with Fatal  
17 Accidents, and has been testifying, but only on behalf of the Crown. He was not  
18 able to say how many accidents.

19  
20 52. In cross-examination, he gave some details about his training. The first course in  
21 2001 was two weeks in duration. The second course was also two weeks long. The  
22 advanced course was three weeks. Two of the certificates were not for  
23 reconstructing accidents, but rather, were for investigating them. A fourth course  
24 was for one week. Then came a one-week update. These courses all had  
25 examinations.  
26



1 53. The officer also attended conferences and seminars, each for one week periods,  
2 with no examinations. He reads literature in reconstructing but is not a member of  
3 any professional organization of reconstructionist.

4  
5 *MR. COLLIN REDDEN*

6  
7 54. Mr. Collin Redden was accepted by the defence as an expert witness in accident  
8 reconstruction. He testified as to his previous experience in the police force, his  
9 training in reconstruction and his accreditation. He has testified over 100 times in  
10 traffic reconstruction cases. His total years' experience as a reconstructionist was  
11 about 14 to 15 years.

12  
13 55. Mr. Redden described the accident scene in similar terms to P/S Butler. He  
14 examined the scene and concluded, as did P/S Butler, that speed was the cause of  
15 the accident. In Mr. Redden's view, the driver was attempting to negotiate a bend  
16 and came off the road, overcorrected and came back on the road, lost control of the  
17 vehicle, it went into a yaw, that is, side slipped, the driver attempted to correct it  
18 and it went into a second yaw. Then the left front bumper and hood made impact  
19 with the coconut tree. Mr. Redden found the left front axis ripped off and across the  
20 road from the car.

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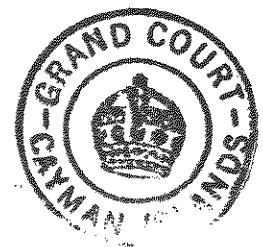
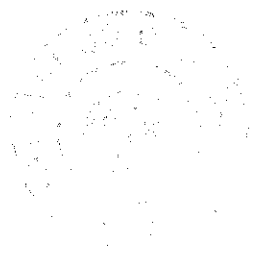


1       56.     According to him, after hitting the tree the vehicle rotated counter clockwise then  
2             side slipped beyond the coconut tree leaving the front bumper in the grass. A  
3             wedge built up causing the car to go airborne. It continued to tumble and lose parts  
4             as it rotated and rolled. The roof peeled back and ripped open. That is when the  
5             deceased was ejected. The car rotated one more time before coming to rest on three  
6             wheels. That was Mr. Redden's view.

7  
8       57.     The witness testified that he himself did not calculate the speed but he offered a  
9             range between 90 and 100 miles per hour, based on the damage he saw and the  
10            distance the vehicle travelled before coming to rest. He does crash tests and  
11            accumulates data about varying types of damage. It is that experience that allowed  
12            him to offer the range of speed.

13  
14      58.     Mr. Redden described Lover's Wall as being at the entrance of the deep right hand  
15            bend which is just before where the collision occurred.

16  
17      59.     He described damage to the car, the rear bumper was ripped off, trunk forced open,  
18            windshield was shattered, the floor mat penetrated the windshield on the passenger  
19            side, the roof panel was ripped off. The left axle, containing the wheel, was 219  
20            feet from the vehicle, across the street. In Mr. Redden's opinion the vehicle rolled  
21            about 3 to 4 times before coming to its final resting place on the rocks.



1       60.     In cross-examination, the witness testified that he had not discussed the speed at  
2             which he thought the car was going with P/S Butler. Mr. Redden testified that he  
3             had attended the scene about two hours after the accident had occurred. He was  
4             there as a reconstructionist and investigator with a different job from Sgt. Butler.  
5             He, the witness, had not been instructed to calculate the speed of the vehicle. That  
6             was the job of P/S Butler.

7  
8       61.     Mr. Redden explained that there were yaw marks on the scene that did not concern  
9             this accident but he was able to distinguish the applicable yaw marks because they  
10            were fresh. The second set of yaw marks matched up with the first set. The first set  
11            was just beyond the bend, the second set went directly to the coconut tree.

12  
13      62.     Mr. Redden testified that he has seen the report of Mr. Ian White, the defence  
14             expert, and disagrees with his conclusion that the speed of the vehicle at time of  
15             accident was about 50 to 70 miles per hour.

16  
17      63.     Mr. Redden told us in cross-examination that he had not seen a crash test with an  
18             Altezza but he had seen one with the American version of the same car about 3 or 4  
19             years ago. According to him, if the speed had been less, the car would not have  
20             travelled over 200 feet beyond the tree that it had impacted. The type of car, he  
21             said, has a crash rating of 5 miles per hour, that is, a collision at 5 miles per hour  
22             would result in no or minimal damage.

23  
24      64.     When he inspected the vehicle, according to Mr. Redden, the four windows were  
25             completely down and the left passenger seat was in the upright position.



1 65. Cross-examination of this witness culminated in a challenge to the level of his  
2 expertise. He testified that he has kept up to date with the credits stipulated by the  
3 Accreditation Commission for Accident Reconstruction. Mr. Redden has never  
4 given evidence for the defence but his duty is to the Court. Winning is not  
5 important to him.

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*DC KAREN MCQUADE*

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66. Detective Constable Karen McQuade testified that she assisted P/C Chong at an  
interview of the defendant. She described that most of the defendant's answers  
were "No Comment" but that during the interview she handed the police a  
statement which the defendant said had been written by her lawyer. In that  
statement she said that she was not the driver. Later in the interview she stated that  
she was in the front passenger seat, Karen and Tamara were in the back, and Olivia  
Smith was the driver. That interview was on January 29, 2012.

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*PC CHONG*

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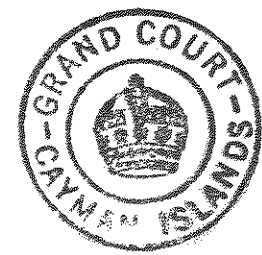
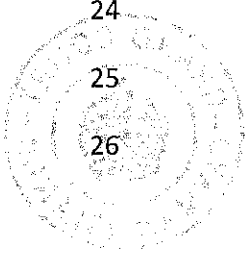
67. Police Constable Chong was the final witness for the Crown. He had arrived at the  
scene at about 7:56 p.m. as the paramedics were departing with one victim. He too  
noticed that the road at the scene of the accident was dry asphalt. The Fire  
Department provided light to the crash scene.

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1       68.     The white Altezza motor car had major damage all over its body. The left front  
2       door had been removed. The left front tyre was on the other side of the main road.  
3       He noticed the front bumper near the coconut tree and small pieces of engine parts.  
4       The lower section of the bark of the tree appeared to have been ripped apart. He  
5       observed a black Kawasaki motorcycle on the opposite side of the road, with a red  
6       crash helmet close to the crash scene.

7  
8       69.     The Court attended at the locus and P/C Chong pointed out particular relevant  
9       areas.

10  
11      70.     In cross-examination, P/C Chong testified that from August 16, 2011, he started to  
12      visit Ms. Priscilla at the hospital. He said that she was unable to give a statement to  
13      him because of her condition. He tried again on the 20<sup>th</sup> and 22<sup>nd</sup>. Eventually, he  
14      obtained a written statement from her on 25<sup>th</sup> August 2011. The evidence was that  
15      at that time, Ms. Priscilla had in fact been prescribed with, *inter alia*, a pain killer  
16      for mild to moderate pain.

17  
18      71.     P/C Chong's evidence was that he interviewed the defendant under caution and he  
19      was assisted by D/C McQuade whose evidence I have already reviewed. That  
20      interview was not until November 24, 2011, months after the accident. The delay  
21      was because the defendant had left the Islands on the morning after the accident  
22      seeking medical attention.

23  
24      72.     He charged the defendant on February 9, 2012. On being cautioned, she replied,  
25      "Yes, I understand."

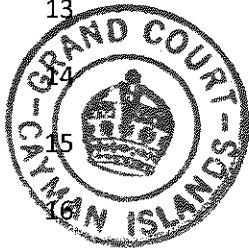
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1 73. In cross-examination, the officer said that the traffic at the accident scene had been  
2 light. He had gone into the area seven times trying to get CCTV footage but there  
3 were no cameras at that time, which could assist.

4  
5 74. In further cross-examination, P/C Chong testified that on August 16, 2011 when he  
6 had been unable to obtain a statement from Ms. Priscilla, he spoke to the witness  
7 Tamara Smith. She gave him a brief summary of the accident. This she did in the  
8 presence of Ms. Scott, mother of Ms. Priscilla, and said the driver of the car had  
9 been Priscilla. That summary was, according to P/C Chong, documented and  
10 signed.

11  
12 75. On August 25, P/C Chong recorded Ms Tamara's statement. He asked her to tell  
13 him everything she could remember. He also gave evidence that he told her that it  
14 is important for her statement to be truthful and accurate. She gave the statement.  
15 He read it to her; she read it over herself and signed it. The officer explained to her,  
16 the purpose of the reading over was to enable corrections to be made.



17  
18 76. On September 5, 2011, the officer took a statement from Ms. Olivia Priscilla Smith.  
19 She said she was well enough, she did not appear to be affected by hospital drugs.  
20 He instructed Ms. Priscilla in the same terms as I described earlier. She read  
21 though her statement and declaration. The officer directed her to read over the  
22 statement and make corrections where necessary.

23  
24 77. On September 22, 2011, the officer returned Dorlisa's property to her aunt, Tabitha  
25 Piercy. It was a Sketcher bag which had been found at the scene and which was in  
26 an exhibited photograph at the floor of the front passenger seat.

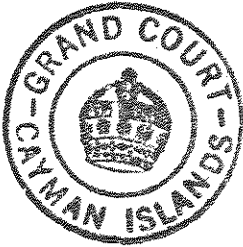
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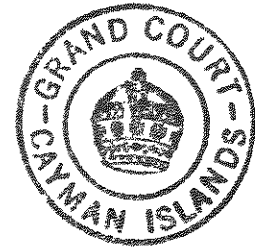
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78. The officer testified that Forensic tests were done. The vehicle was tested during the week of the collision and again about a year later. On May 18, 2012, according to the officer, he took a DNA specimen from Ms. Priscilla.

*ADMISSIONS*

79. Read into evidence were agreed facts that showed that the DNA analysis does not assist the case. Also agreed was that in the notes recording her meeting with P/S. Butler, Counsel for the Crown had made no note of being shown the yaw mark which he used to calculate speed.





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*CASE FOR THE DEFENCE*

*MS. DORLISA PIERCY – DEFENDANT*

5       80.     Ms. Dorlisa Piercy gave evidence that on that fateful evening she was not the driver  
6           of the car. It was Olivia Priscilla Smith who had been driving. According to Ms.  
7           Piercy on 14<sup>th</sup> August 2011, she had gone to Rum Point with her friends and spent  
8           some hours there. On their way back to town they had gone to East End in order to  
9           buy fish. She knew that Johnny Bodden, her boyfriend of about 12 years, would be  
10          at the bar there with his friends and he was to give her money to help her buy fish  
11          for all her friends.

12  
13       81.     There was no fish available and the ladies went to the bar where Johnny was, spent  
14          a few minutes there, then left East End, heading towards George Town. According  
15          to her, Olivia Priscilla Smith was in the driver's seat and she was in the front left  
16          passenger seat. Later she testified that she does not know how persons were  
17          positioned in the back seat. She did not care about that. According to her, she was  
18          concerned only with herself.

19  
20       82.     Minutes before the car drove out, she had seen Johnny Bodden and his friends  
21          leave. Johnny was on his bike and his friends were in a car.

22  
23       83.     Ms. Piercy remembers looking out the window and seeing the gas station on her  
24          left. The gas station was in the same location as the bar. Her next memory is  
25          waking up in George Town Hospital. She remembers nothing about the crash. She  
26          remembers next waking up in Jackson Memorial Hospital, Florida where she  
27          remained until November 2011. She was not able to walk until December 2011.

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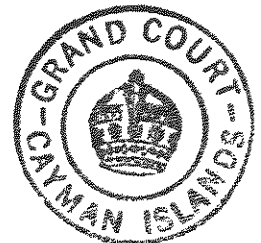
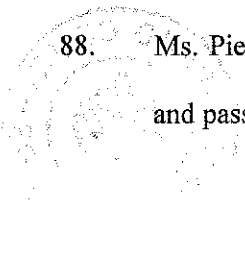
84. The defendant testified that she was interviewed by the police. Her lawyer had not been available but she had explained to the lawyer that she had not been driving at the time of the accident, and the lawyer wrote something on a paper for her to say during the interview. Her lawyer also advised her to make no comment during the interview and she followed that advice.

85. In cross-examination Ms. Piercy testified that she had driven Ms. Olivia Priscilla Smith's car on numerous occasions, too many to count. The last time might have been about a week before. Sometimes she would keep Ms. Smith's car overnight to help her .If, for example, Ms. Smith was going out and did not want to have her car at that location Ms. Piercy would go and get the car and secure it.

86. Her evidence is that on this occasion she offered to drive the car but Priscilla declined, saying it was her car and she was not going to make anyone drive it or let anything happen to it because she was not drunk.

87. It was the defendant's evidence that her brain had been damaged and she had forgotten "stuff". However she does recall that in the interview she had told the police that she remembered the accident. She explained that when the officer asked her "Do you recall the accident?" she thought the officer was talking of events leading up to the accident, not the accident.

88. Ms. Piercy described the car as having a centre console between the driver's seat and passenger seat where items could be secured.



1 89. Ms. Piercy agreed that she has had three speeding convictions. She did not recall  
2 how much over the limit she had been but for one in 2006 she was fined \$200, for  
3 one in 2009 she was fined \$140 and for one in 2010 she was fined \$100.

4  
5 90. Her evidence was that that car could not catch up to Johnny Bodden's bike or to his  
6 friend's car before him.

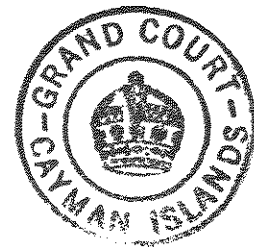
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8 ***MR. JOHNNY BODDEN***

9  
10 91. Mr Johnny Bodden testified that the defendant has been his girlfriend for about 12  
11 years and is now the mother of his child. He had been with her and the other ladies  
12 at East End. He and his friends had left East End before them so he had not seen  
13 who was driving the car in which the ladies were travelling. However, on prior  
14 occasions he has seen the defendant driving it.

15  
16 92. Mr. Bodden's evidence was that he had not seen or heard the accident. His bike has  
17 no side mirrors. However, he had caught up to his friends in the car before him  
18 when that car stopped abruptly and the friends gave him the news.

19  
20 93. He turned around going back towards East End and saw Tamara Smith. He pulled  
21 over and took his helmet off. He ran up to the car, but did not see his girlfriend.  
22 Ms. Olivia Priscilla Smith was in the car. He cannot say where she was positioned.

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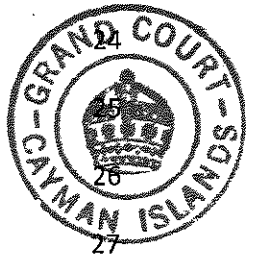
1 94. He started following the path he saw that the car had travelled in coming off the  
2 road. He went up to where he saw a pair of legs. It was not his girlfriend. It was  
3 Karen lying on the ground. He looked further along what he described as the path  
4 of destruction and saw another body on the ground. That was the defendant face  
5 down with one of her legs bent behind. She was closer towards East End than was  
6 the vehicle.

7  
8 95. Mr. Bodden's evidence is that he and his friend put the defendant into his friend's  
9 very small car and took her to the hospital. He had no recollection of anyone  
10 pleading with him not to move her body.

11  
12 96. In cross-examination Mr. Bodden said that he had not planned to meet the  
13 defendant at East End, but he knew that she and her friends would have been going  
14 there. He had taken money to her at Rum Point and she had told him that she  
15 would be going to East End.

16  
17 97. Mr. Bodden in further cross-examination testified that the bike he was riding can  
18 travel faster than 100 miles per hour though he cannot say what the maximum  
19 speed is, but he knows that older models can go up to 194 miles per hour. The car  
20 that his friend was driving was a sports car with a turbo engine and is very fast.  
21 Both the car and the bike pulled out before the ladies left but were not going fast.

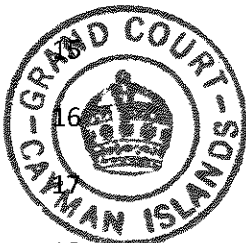
22  
23 98. He testified that he had seen the other ladies at the accident scene but he had not  
attended to them. Neither had he sought any help for them. He was focused on  
saving the defendant's life. Though he knew where Ms. Olivia Priscilla Smith's  
family lived, he did not inform them of the accident or attempt to.



1 99. Mr. Bodden gave evidence surrounding the circumstances prevailing at the time. It  
2 was still daylight and he had seen cars on the road between East End and Lover's  
3 Wall but he could not expand on how much traffic there had been.

4  
5 100. Mr. Bodden testified that it was not until the defendant and he had reached overseas  
6 that he had become aware that the defendant had been arrested on the night of the  
7 accident. The police had approached him to give a statement but he had told them  
8 that he wished not to say anything on the matter and had in fact signed to that  
9 effect. He does not know why he never told the police what he knows although he  
10 thought that the truth would assist the defendant.

11  
12 101. Before the accident, testified Mr. Bodden, his bike was going at approximately 60  
13 miles per hour. So too was his friend's car. His evidence was that at the time of  
14 the accident the Altezza was just catching up with him and his friends. It was just  
15 coming into sight. He explained how he was able to say that when he did not have  
16 side windows and was unable to see behind him whilst riding. His explanation was  
17 that when his friend stopped, the friend said he believed the girls had just got into  
18 an accident.



19  
20 102. Not once whilst riding had he looked behind to see if the ladies were coming. His  
21 focus was on catching up to his friend and he had expected them to be shortly  
22 behind him, but not immediately behind him.

23  
24 103. Mr. Bodden testified that he has previous criminal convictions. Some were traffic  
25 related convictions, including some for speeding in 2002, 2005, 2010 and February  
26 2011 and also for failing to comply with traffic signals.

27

*MR. IAN WHITE*

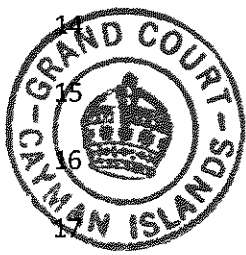
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104. The final witness for the Defence was Mr. Ian White who testified that he has been an accident reconstructionist in the United Kingdom for the best part of 25 years. He is a mechanical engineer and has been a member of the Institute of Traffic Accident Investigations for 15 years. He has also been an Associate of the Institute of Automotive Engineers from 1989. For the last 25 years he has done about 900 accident reconstructions. However, he has never given evidence for the Crown in a criminal matter. Mr. White's report concerning the accident was exhibited.

105. Mr. White's evidence was that in the week of January 7, 2014 he inspected the damaged car at the Traffic Department Compound. The engine had been removed, and according to him, the front panels had either been removed or distorted while the engine was being removed. The engine was actually on the roof of the vehicle but he had overlooked it in the course of focusing on the extent of the deformation and also, having been affected by the fact that the engine had been removed from inside the vehicle before his inspection.

106. In reaching his calculation of the speed of the vehicle as it approached the tree, Mr. White relied in part on the deformation which had occurred to the vehicle. The removal of the engine would have affected his results.

107. Mr. White's evidence was that when he went to the crash site in 2014, some of the marks used by the police were no longer visible. In his experience yaw marks and skid marks do not usually remain on the road surface for longer than 2 weeks, depending on road usage and the weather.



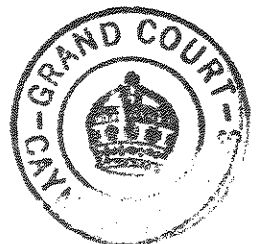
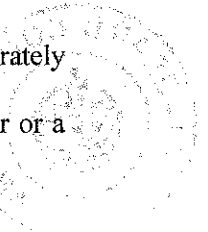
1 108. Therefore, when he inspected, he used the photographs from the police to  
2 reconstruct the approximate location of the marks. However those marks could not  
3 assist in the calculation of speed because the marks that were recorded showed him  
4 that they were made when the vehicle was in a complete yaw. He emphasised that  
5 speed is not to be calculated from marks made when the vehicle is in a complete  
6 yaw as it results in an estimated speed far in excess of what it actually was.

7  
8 109. He viewed as inappropriate, P/S. Butler's use of the critical speed formula to  
9 estimate speed. Mr. White testified that it could only properly be used when the  
10 vehicle was going around a corner, not when it was in a full yaw.

11 110. Mr. White testified that P/S Butler's method of taking a radius by chord and  
12 ordinate measurements is well established in circumstances of speed of 25 to 40  
13 miles per hour but depends on the curvature of the road. Here where Sgt. Butler  
14 used a 70 feet curve it would be difficult to get the tape straight and to accurately  
15 measure an offset. The more appropriate measurement would be with a laser or a  
16 surveyor's level.

17  
18 111. Mr. White had little confidence in the sledge test on which P/S. Butler relied. His  
19 evidence was that it has been debunked worldwide as leading to inconsistent  
20 results. Indeed, according to him, an author of a book based on it has sought to  
21 remove his book from the market because he no longer has faith in the accuracy of  
22 the method. He opined that it may well be that several decisions in Court have been  
23 wrong because of the ill placed reliance on it. There are a few places, however,  
24 including Florida and Canada which still use it.

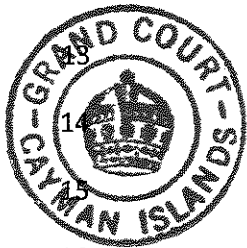
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1 112. Mr. White's evidence is that the sledge test is of value only in slow speed  
2 collisions. The road involved is also, in his view, not suitable for use of that test.

3  
4 113. As it concerns Mr. Redden, Mr. White found no indication that he had used any  
5 mathematical calculation in his report. His reliance on results from crash tests was  
6 viewed by Mr. White as being wrong because it is not possible to construct a crash  
7 site where the impact was sliding, as was the case here where there was sliding  
8 impact between the tree and the car.

9  
10 114. Mr. White's opinion was that the collision occurred at 60 to 65 miles per hour as a  
11 rough estimate. His estimate was based on mathematical calculations utilizing post  
12 impact speed and the deformation on the vehicle. First, he considered the post  
13 impact motion. The incident had occurred at the tree and the car thereafter travelled  
14 228 feet to rest. In addition, the wheel had become detached on impact and came to  
15 rest across the road. It had travelled approximately the same distance as the car.  
16 He calculated from those distances the speed of the car after impact.



17  
18 115. If the car had flown to rest, he estimated that the post impact speed would have  
19 been 30 miles per hour. If it had slid to rest, it would have been 50 miles per hour.  
20 The car had both flown and slid so he used an estimate of 30 to 50 miles per hour as  
21 the speed of the car when it was leaving the coconut tree.

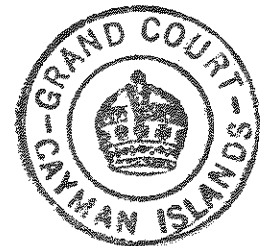
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23 116. Mr. White agreed with Mr. Redden that the vehicle had had a sliding impact with  
24 the tree, had slid a short distance then spun in anti-clockwise motion still moving  
25 sideways and thereby building up a wedge of earth. Next it would have become  
26 airborne, rolling over with the roof hitting stones and the left rear of the car  
27 receiving direct impact, then coming to rest.

1 117. Mr. White's evidence is that he intended to measure the extent of deformation of  
2 the vehicle on impact. However when he examined the car, over 2 years later, the  
3 engine had been removed from the car and therefore the deformation had been  
4 modified and some of his measurements had to be estimated. For this exercise, he  
5 used the measurements he had been able to obtain on the site visit in conjunction  
6 with photographs from the police and Mr. Redden. His evidence was that he  
7 expects that his estimate of the deformation is greater than it actually was.

8  
9 118. Mr. White testified that his initial calculation was based on a calculation used  
10 worldwide, and resulted in a figure of 30 miles per hour being the amount by which  
11 the speed had lessened after impact. However, in that initial calculation the  
12 presumption was that the collision of the car was direct whereas in this instance the  
13 collision was sliding and in Mr. White's opinion, the energy to deform the car  
14 would be substantially less. He therefore concluded that the change in the velocity  
15 of the car as it hit the tree in that sliding motion was 15 to 20 miles per hour, not 30  
16 miles per hour.

17  
18 119. Having estimated that after the impact, the speed was between 30 and 50 miles per  
19 hour and that at the point of impact it had lost 15 to 20 miles per hour, Mr. White  
20 concluded that the speed on impact was between 50 and 75 miles per hour.  
21 However, based on the deformation he suspected that the speed on impact was  
22 more likely to be 60 to 65 miles per hour.

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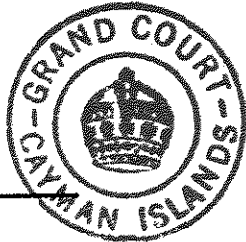
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120. Mr. White did not agree that the vehicle lost control on the bend. In his opinion, the bend was too far from the tree and further, there were no marks on the ground linking the collision with the bend. His opinion is that it went out of control in close proximity to the tree. According to him, if it had lost control on the bend, it would have returned to the road, or alternatively, it would have gone into a swerve and there is no indication of any swerving.

121. Mr. White also disagreed with Mr. Redden's opinion that if the car had collided with the tree at 50 miles per hour it would have stopped. He explained that damage to a car in a sliding impact is substantially less than in a head-on collision. This collision was sliding.

122. Mr. White observed that marks on the road would disappear within 2 to 3 to 4 weeks depending on road usage and weather. Normally, the police would have measured all pertinent distances, would have marked them and photographed them. Equipped with such information he would have been able to estimate the speed to a range of plus or minus 5 or 10 miles per hour. However, here the police took insufficient measurements accounting for the relatively wide range which he estimated.

123. Mr. White's evidence was that a measurement of the distance from the tree to where the wedge had built up would have been useful. Also, the exact position of the area of the stones which the car roof had hit would have helped in reconstruction.



1 124. Mr. White, in commenting on Mr. Redden's estimates of speed based on crash test  
2 results, said that he is unaware of any crash tests done at speeds higher than 60 to  
3 70 miles per hour. Also, he is unaware of crash tests done with a sliding impact.  
4 They are generally head-on.

5  
6 125. In his opinion a friction co-efficient of .75 was appropriate. He agreed that the  
7 estimated speed would be 95 miles per hour if the critical speed calculated by P/S  
8 Butler were applied. However, that critical speed calculation was flawed in his  
9 view.

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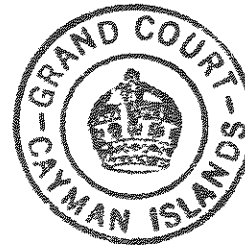
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1 ANALYSIS

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3 126. The Road Traffic Law (2003 Revision) provides that:

4  
5 “67. (1) Whoever drives a vehicle on a road dangerously or recklessly  
6 (having regard to the manner of driving or to the defective condition of the  
7 vehicle) and thereby causes the death of another person is guilty of an offence.”  
8

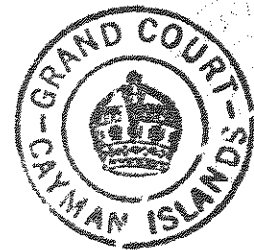
9 127. It is not disputed that Ms. Karen Edwards died as a result of injuries she suffered  
10 during a car accident at East End on August 18, 2011. The issues to be resolved are  
11 these:

- 12 i. Who was the driver of the vehicle; and  
13 ii. Was the driving dangerous?

14  
15 **WHO WAS THE DRIVER?**

16  
17 128. The defendant’s case is that the driver was the owner of the car, Ms. Olivia Priscilla  
18 Smith. The prosecution’s case is that the driver was the defendant.

19  
20 129. Both Ms. Priscilla and Ms. Tamara Smith testified that the defendant received the  
21 car keys from Ms. Priscilla at East End. Both also said the defendant was driving  
22 and Priscilla was in the passenger seat. The police and fire officers testified as to  
23 seeing a young lady trapped in the front passenger seat and their evidence was that  
24 she was Ms. Olivia Smith, the owner of the car. They gave no evidence of seeing  
25 anyone in the driver’s seat.



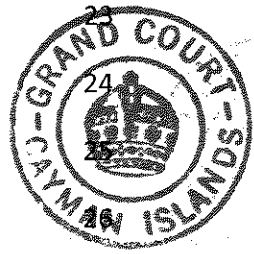
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130. However, both Mr. and Mrs. Motsko, who say that they went to the scene shortly after the impact and before the police had arrived, described the lifeless looking body of a female being taken from the scene by men. A police officer subsequently testified that he noticed the defendant arriving at the hospital in a private vehicle, as the first victim. Mrs. Motsko saw two other victims, including a person whom she described as a young man appearing to be dead in the front seat.

131. The police and fire officers and the Emergency Medical Technician all testified to seeing the victims of the accident on the scene, Tamara, Priscilla and Karen. None of them saw the defendant.

132. There has been no challenge to the evidence of the prosecution witnesses concerning the persons who were and were not at the scene. The issue is who was in the driver's seat. Ms. Priscilla and Ms. Tamara Smith, as well as the witnesses who arrived on the scene (except Mrs. Motsko who spoke of a young man) described Priscilla as being in the passenger seat. Their descriptions are of the person in that seat being stuck there. The prosecution stoutly submits that the defendant was the driver and that when the prosecution witnesses arrived on the scene, she was no longer in the seat.

133. However, the defence has vigorously rejected that and submits that there has been collusion between Tamara and Olivia Priscilla Smith to say that the defendant was driving. The basis for the submission that the ladies would do that is that they are both closer friends to each other than either of them is to the defendant, and perhaps more importantly, they had thought that the defendant had died.



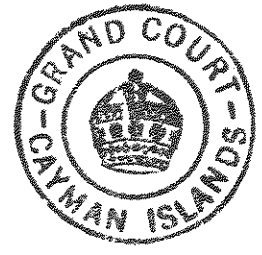
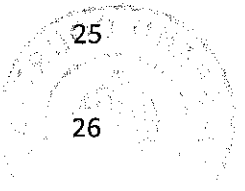
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134. This scenario carries with it the inference that Ms. Olivia Priscilla Smith would have been moved around during the accident to the extent that she moved from the driver's seat across the central console and then onto a lying position on the passenger's seat where she was found with one leg outside of the passenger door and one stuck in the dashboard in front of the passenger seat.

135. The Defence also relies on the defendant's recollection that Ms. Olivia Priscilla Smith was adamant that she did not want anyone to drive her car because she was not drunk. At the same time, however, the defendant has given evidence that she had driven Ms. Smith's car more times than she could count and that she had even gone on occasion to Ms. Smith to collect the car and secure it for her overnight.

136. I say at the outset that I do not believe this aspect of Ms. Piercy's evidence that a conversation took place where Ms. Smith rejected her offer to drive, when the unchallenged evidence has been that Ms. Smith had told all the ladies that she, Ms. Smith, had been too tired to drive the whole way from Rum Point to East End and then to town.

137. There is no evidence challenging the position that Ms. Priscilla was in when the witnesses arrived. I am satisfied so that I am sure that Ms. Priscilla was in the front passenger seat when the witnesses saw her and had been there at the time of the collision.



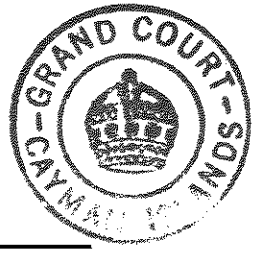
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138. Did she deliberately go to that seat after the car had come to rest? I think not. The car had flown and tumbled, she had been mildly confused after, and her leg was broken. Did she accidentally go there during the accident? Did the movements in the car result in her being there? Had that been so, the defendant would have had to have fallen from the passenger seat and thereafter Ms. Priscilla would have had to have fortuitously tumbled into the seat vacated by the defendant and then become jammed there.

139. I am satisfied so that I am sure that at the time of the collision, the defendant occupied the driver's seat. Immediately, after the collision, the driver's seat was empty. Ms. Piercy was not in the car. I am sure that Ms. Piercy was driving. The other scenarios strain credulity. I reject the argument of collusion between the ladies. In my view, Ms. Olivia Priscilla Smith was stuck in the same seat in which she had started that leg of the journey. I believe her that she was tired and that the defendant was driving the car.

*WAS THE DRIVING DANGEROUS?*

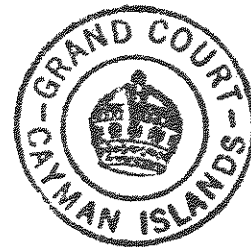
140. The next question therefore is as to the manner in which the driver drove the car. Was it dangerous? The evidence is unchallenged that the car had been travelling along the road when it left the road and hit a coconut tree, and rolled over at least once before coming to rest. The prosecution's case is that excessive speed of the vehicle in the particular circumstances amounted to dangerous driving.

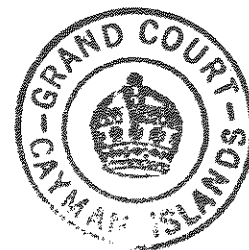


*Mr. Redden's evidence and its effect*

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2  
3 141. In an effort to prove excessive speed, the prosecution relied on the evidence of Mr.  
4 Collin Redden who was accepted by the Defence as being an expert in accident  
5 reconstruction, as well as the evidence of P/S Butler. Mr. Redden's evidence,  
6 however, is that he had been contracted to go to the accident scene for  
7 reconstruction purposes but he had not been asked to estimate the speed of the  
8 vehicle. That was the job of P/S Butler.

9  
10 142. Nonetheless, Mr. Redden testified that he would "offer" that the vehicle was going  
11 at between 90 to 100 miles per hour. To form this opinion he relied on his  
12 experience and on his visit to a crash test site about 3 years ago. There was no  
13 evidence concerning what it was that he learned at that crash test site that would  
14 have informed his opinion in this case. There was no reference to any  
15 mathematical/scientific basis for his opinion. There is no reason given for choosing  
16 the range of 90 to 100 miles per hour in preference to any higher or lower range.  
17 There is no evidence that Mr. Redden is capable of estimating the speed of a  
18 vehicle by looking at a crash site, and without doing any calculations. Indeed, there  
19 is no evidence that such an exercise is an acceptable method of calculating speed of  
20 a colliding vehicle. I find that I can place no reliance on Mr. Redden's "offer" of  
21 the possible range of speed.





*P/S Butler's evidence and its effect*

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143. On the other hand, Police Sergeant Butler had recourse to mathematical formulae and calculations which he explained. His calculation was exact. The speed, he testified, was 99.91 miles per hour with no margin of error.

144. It is in my view, an extremely rare mathematical calculation which in circumstances such as these, makes no allowance for a margin of error. To my mind, at least one of the factors used in P/S Butler's calculation leaves room for error. That is the critical speed calculation where the tape measure was held manually and where measurements of relatively long distances were taken with the naked eye without recourse to more accurate measuring methods.

145. I accept that it is possible to measure the distance without a surveyor's level or a laser, but it is clear to me that where that is done, there must be a margin of error. P/S Butler was adamant that there was none. This divergence from logic affected his credibility in my view.

146. The defence questioned the expertise of P/S Butler with good reason. I accept that he has attended courses, seminars and that he is receiving learning on reconstructing accident scenes. However, the time which he has so far spent in that regard is not sufficient to allow me to rely on him as being an expert in this particular case. The courses have been for two and one week periods and there is no evidence that his background outside of that training would have assisted him in the technical aspects of reconstructing the scene. He started his career as a Police Officer and has continued along that path. There is no evidence of a mathematical or engineering or technical background, which might have been able to provide

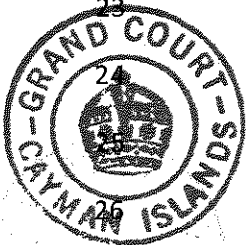
1 some assistance with calculations and formulae where his current training might  
2 have been deficient.

3  
4 147. The accident site was a complex one with a sliding collision, yawing, the vehicle  
5 becoming airborne, and also the site was said by him to span an expanse from a  
6 bend in the road to the car's final resting place. It is regrettable that in all the  
7 investigations there is no clear record of the point from which P/Sgt. Butler took the  
8 measurements on which he based his calculation. The photographs which  
9 purportedly show such a point do not in fact do so clearly.

10  
11 *Expert White's evidence and its effect*

12  
13 148. The defence expert, Mr. White is a mechanical engineer with 25 years of  
14 experience as a reconstructionist. In my view, Mr. White can properly be  
15 considered an expert, based on his training and experience. Interestingly, in his 25  
16 years of experience, he has never given evidence for the Crown. However, he  
17 testified that he is aware that his duty is to the Court.

18  
19 149. Mr. White's effort to reconstruct the accident suffered, however, from some  
20 deficiencies. Firstly, it occurred more than two years after the accident when marks  
21 at the site had been erased. Also, the vehicle had been stored in an open yard.  
22 Further, he did not notice that although the engine which he had needed to examine  
23 was not in the car, it was in fact on top of the car. He had overlooked it and had  
24 failed to examine it with any deformities it may or may not have had. Nonetheless,  
25 based on the examinations he did and his calculations, his opinion was that at the  
26 time of the impact, the car was travelling at between 60 and 65 miles per hour.



1 150. I have not been able to accept P/S Butler as an expert in this particular case and Mr.  
2 Redden did not regard himself as needing to accurately calculate speed. Expert  
3 White it was who sought to provide an estimated speed based on mathematics and  
4 on principles used by reconstructionists. I remind myself nonetheless that I am not  
5 obliged to accept the evidence of an expert. I know that if, after due consideration,  
6 I do not find it has merit I am free to not rely on it.

7  
8 151. In summary, the evidence from Mr. White that the estimated speed on impact with  
9 the tree was about 65mph was based on respected mathematical calculations  
10 whereas the Crown's estimates of 99.91 and 90-100 mph were based on imprecise,  
11 out-dated and non-existent calculations.

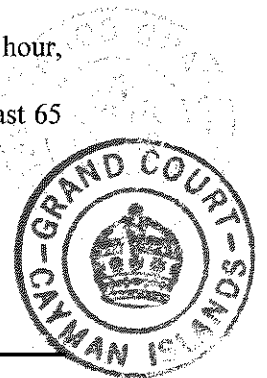
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13 *Occupants' alarm*

14  
15 152. However, I bear in mind and accept as true the evidence of Ms. Tamara Smith that  
16 when she looked at the gauge, the speed was such as to cause her to ask the driver  
17 to slow down. I also accept her evidence as true that Ms. Karen Edwards was also  
18 very much alert to the speed and joined in the request to slow down. It is no  
19 surprise that with the music of Kartel being turned up in the car, Ms. Tamara is not  
20 sure if their pleas were heard.

21 *Additional evidence of speed*

22  
23 153. When I consider the expert's evidence of a maximum speed of 65 miles per hour,  
24 with the concern of the ladies about the speed, I find that the speed was at least 65  
25 miles per hour but more probably greater.

26

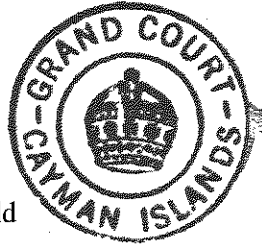


1 154. It is not without moment that the car had left from East End after Mr. Johnny  
2 Bodden had left on his bike which is capable of speeds over 100 miles per hour and  
3 also after his friends super sports car had left. Yet the Altezza car had managed to  
4 catch up with them and was sufficiently close for the friend in the sports car to have  
5 seen when the Altezza car went off the road.

6  
7 155. The accepted expert, Mr. Redden, without accurate calculations, has given his  
8 opinion as to how the accident occurred and attributes it to speed. P/S Butler, not  
9 having the experience or background of Mr. Redden also attributes the cause of the  
10 accident to speed. The expert on behalf of the defence attributes it also to speed but  
11 of much lesser dimension.

12  
13 156. The speed limit was 50 miles per hour. In any event therefore, by the most  
14 conservative estimate, that of the defence expert, Mr. White, the speed limit was  
15 being broken by approximately 33%. I accept that the driver was speeding.  
16 However, in my view the speed was even greater than the 65 mph estimate which  
17 Mr. White gave.

18  
19  
20 157. The extent of the damage to the vehicle and to persons fortifies the view that I hold  
21 as to the greater speed of the vehicle. I expect that the roof of a motor car is not  
22 lightly ripped off. The photographs which were exhibited graphically told the tale  
23 of a motor vehicle which underwent multiple impacts to almost every surface of its  
24 exterior, and some impact on its interior. The sound of the collision was so loud as  
25 to cause two of the witnesses to come racing out of their home which was down the



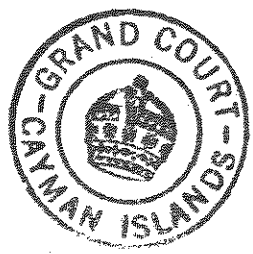
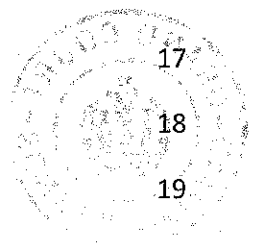
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road and across the road. Common sense dictates that the car was travelling fast.  
But was the speeding dangerous?

*CIRCUMSTANCES*

158. Speed alone is not sufficient to amount to dangerous driving. I must consider any other circumstances there may be. The driving conditions seemed to have been favourable, smooth asphalt, dry, clear conditions and it was not dark. It must not be overlooked however, that this was a two lane roadway, 24 feet wide, to accommodate traffic on each of the two sides of the road. The collision occurred near a bend.

159. In my view driving at such a speed on a two lane public roadway on which cars travel in opposite directions along both lanes must properly be considered to be dangerous, not only to the occupants of the car but also to any other user of the road who could have been there at the time.



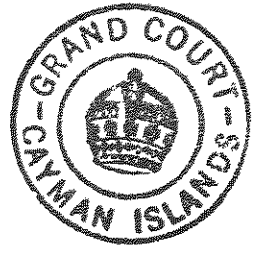
*INCONSISTENCIES AND DISCREPANCIES*

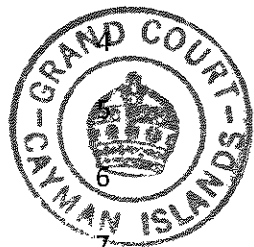
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160. Inconsistencies and discrepancies are present. I know that over two years have passed since this incident occurred and memories will fade. However where I identify inconsistencies and discrepancies I have assessed them to determine if they are serious and thereby undermine the credibility of the witness or if they are minor and excusable based on the frailty of man's memory. I remind myself that I am at liberty to accept all, some or none of the evidence which the witnesses give.

161. In the cross-examination of Ms. Olivia Priscilla Smith, the evidence unfolded that she had given differing accounts as to where persons sat in the vehicle. She testified that in her first statement she had given the correct seating arrangements, Dorlisa driving, Tamara behind her, she in the passenger seat and Karen behind her. Years later, in preparing for trial, according to her, she read that statement for the first time and without checking it properly she changed the positioning, indicating that Karen was behind Dorlisa and Tamara was behind her, Ms. Olivia Priscilla Smith, who was in left front passenger seat.

162. However, in that meeting preparing with the Crown Counsel, on 15<sup>th</sup> January 2014, Ms. Olivia Priscilla Smith says that she was nervous and did not have a lawyer to go through the statement with her. She realized that what she had said to the Crown Counsel was wrong and she asked to put back the statement to what she had said initially, which was the correct account.





1       163. Defence urged me to accept that I should not believe Priscilla's explanation that she  
2       was nervous and had no lawyer. The seating at the rear could have shed light on  
3       how the front passengers were located, in terms of who sat behind the driver. I  
believe Ms. Priscilla that she realized she had made a mistake with the Crown  
Counsel and corrected it. Further, in my view, Ms. Priscilla could credibly have  
been nervous in recollecting this accident scene which had had such devastating  
results, and knowing that the trial was imminent.

8

9       164. Ms. Priscilla explained that what she had written years ago as she described it, was  
10       whilst she was under drugs. Now, prior to the trial she had been called by the  
11       prosecution to see if she had anything to add and that was what she did.

12

13       165. Is this a minor discrepancy, or major? In the circumstances I regard it as minor. I  
14       take note of the fact that Ms. Priscilla had been in a devastating accident with the  
15       death of her friend Karen and with serious injuries to Dorlisa, her friend at the time,  
16       and herself. I excuse her momentary lapse at the meeting to prepare for this case.  
17       It does not affect my view of her credibility.

18

19       166. In attacking the credibility of Ms. Tamara Smith, by way of inconsistent statements,  
20       the Defence also relied on a statement purportedly made by her in the presence of  
21       the mother of Ms. Olivia Priscilla Smith to the effect that Priscilla had been driving.

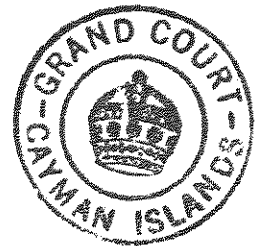
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23       167. This evidence was elicited through the cross-examination of P/C Chong. It was not  
24       put to Ms. Tamara Smith although she was rigorously cross-examined. She did not  
25       get the opportunity to respond as to the truth and/or accuracy of P/C Chong's  
26       evidence that she had made such a statement. Nor did she get the chance to provide

1 any explanation for such a statement, if there were any, if she had indeed made it.  
2 Indeed, if it had been put to her and she had accepted it but could proffer no  
3 explanation for the inconsistency then there would have been the opportunity for it  
4 to be exposed that she had no acceptable explanation for that inconsistency.

5  
6 168. It is long accepted that a statement which was made by a witness on a previous  
7 occasion outside of the trial and which is inconsistent with evidence at the trial is  
8 not evidence unless it has been accepted as being true by the witness. If the witness  
9 does not accept it as being true and there is proof that it was actually said, then the  
10 existence of the inconsistency would be considered in assessing the witness'  
11 credibility.

12  
13  
14 169. Here I do not accept the purported previous inconsistent statement as evidence  
15 affecting Ms. Tamara Smith's credibility. Ms. Tamara did not have the  
16 opportunity to comment on it. Without such a comment the evidence of P/C Chong  
17 does not assist. Ms. Piercy was charged the same night of the accident. P/C Chong  
18 remained an active investigator and having been present at this purported  
19 conversation that it was Priscilla who had been driving, still, months later when Ms.  
20 Piercy returned to Cayman in 2012, it was P/C Chong who formally charged her  
21 with the offence. My view of Ms. Tamara Smith as being a credible witness  
22 remains untouched.

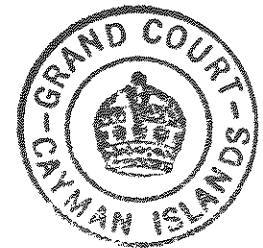


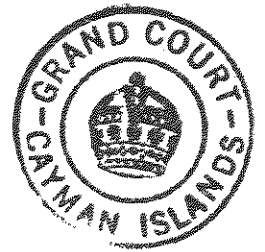
1 170. There were other discrepancies but it is not necessary in my view to highlight each  
2 and every one, save to say that I have examined the evidence in great detail and  
3 have formed the view that such discrepancies as exist on the prosecution's case are  
4 minor and do not affect the gravamen of the case nor the credibility of the  
5 witnesses.

6 171. I pause here also to indicate that some of the witnesses in this matter both  
7 prosecution and defence, have had personal encounters with the criminal law. I  
8 have not used those unchallenged facts to play any part in assessing their credibility  
9 in the circumstances of this case.

10  
11 172. Indeed, Ms. Piercy herself has admitted to previous convictions. I do not  
12 automatically assume that, because of these convictions she is guilty or that because  
13 of them she is not speaking the truth in this matter. In fact her evidence was that  
14 she had not challenged her guilt in those previous charges. However in this case,  
15 she has pleaded not guilty. I am not allowing those convictions to affect my  
16 judgment in this case.

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*REJECTION OF DEFENCE*

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3 173. The defence called three witnesses in support of their case. I accept Mr. White as  
4 having expertise in the area of accident reconstruction and his evidence I found to  
5 be very helpful and I have applied it in tandem with the other evidence in the case.  
6

7 174. However, I was not impressed with the credibility of both Mr. Bodden and Ms.  
8 Piercy as it concerns the pertinent aspects of the matter. As one such example as  
9 the basis for my opinion, I recall in particular Ms. Piercy's evidence to the effect  
10 that Ms. Priscilla did not wish her to drive her car when they were leaving East  
11 End, giving the clear impression that Priscilla did not trust anyone to drive her car.  
12 Yet Ms. Piercy gave detailed evidence of the confidence which Priscilla reposed in  
13 her ability to drive the car, when she testified that she, Ms. Piercy, would go and  
14 collect the car from Priscilla and secure it for her overnight, as requested by  
15 Priscilla.

16  
17 175. Although it is certainly credible that Mr. Bodden would have been extremely  
18 disturbed/affected by what he had seen when he arrived at the accident scene, the  
19 extent of what he failed to see and to do affected his credibility in my view. He saw  
20 Priscilla alone in the car but did not know where she was positioned. He knew  
21 Priscilla's family and made no effort to inform them of her being in the accident,  
22 but instead left her there, without more. He made no effort to cause persons to come  
23 to the scene to render help. This too is but one excerpt from his evidence which,  
24 taken with all his other evidence, caused me to refrain from placing reliance on his  
25 testimony concerning the pertinent aspects of the case. His sole focus, which he

1 indeed stated, was to ensure that his girlfriend Dorlisa, was helped and protected.  
2 He was afraid she might have died.  
3

4 **AUTHORITIES**

5  
6 176. Counsel have referred me to helpful authorities concerning the applicable law. In  
7 *R v Gosney*<sup>1</sup> the English Court of Appeal was concerned with an appellant who had  
8 admitted that she had driven in the wrong direction on a dual carriageway but had  
9 been denied the opportunity to give evidence to show that the erroneous driving had  
10 arisen through no fault of hers, but because of an absence of proper signage. There  
11 the Court held at page 680 that driving in a dangerous manner is not an absolute  
12 offence and stated:

13 *“In order to justify a conviction there must be, not only*  
14 *a situation which, viewed objectively, was dangerous,*  
15 *but there must also have been some fault on the part of*  
16 *the driver, causing that situation. “Fault” certainly*  
17 *does not necessarily involve deliberate misconduct or*  
18 *recklessness or intention to drive in a manner*  
19 *inconsistent with proper standards of driving. Nor*  
20 *does fault necessarily involve moral blame. Thus there*  
21 *is fault if an inexperienced or a naturally poor driver,*  
22 *while straining every nerve to do the right thing, falls*  
23 *below the standard of a competent and careful driver.*  
24 *Fault involves a failure, a falling below the care or*  
25 *skill of a competent and experienced driver, in relation*  
26 *to the manner of the driving and to the relevant*  
27 *circumstances of the case”.*  
28

29 177. In *R v. Evans*<sup>2</sup> the Court of Appeal of England and Wales had held that in  
30 determining if the driving is dangerous, the test is objective and held at page 418:  
31

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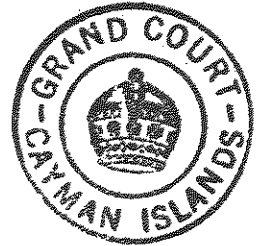
<sup>1</sup> (1971) 2 QB 674

<sup>2</sup> (1963) 1 QB 412



1                                    *“It is quite clear from the reported cases that if a*  
2                                    *driver in fact adopts a manner of driving which the*  
3                                    *jury think was dangerous to other road users in all the*  
4                                    *circumstances, then on the issue of guilt it matters not*  
5                                    *whether he was deliberately reckless, careless,*  
6                                    *momentarily inattentive or even doing his incompetent*  
7                                    *best.”*  
8  
9

10       178.    I remind myself that, as the English Court of Appeal stated in the case of *R v*  
11                    *Conteh*<sup>3</sup>, however tragic the situation may be, the high threshold of proof of  
12                    the dangerousness of the driving must be established. *Brown v Orr*<sup>4</sup>, on  
13                    which Defence Counsel relied, is distinguishable from the instant matter as the  
14                    evidence there showed that there was no traffic in the area and none could have  
15                    been expected nearby.



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<sup>3</sup> [2003] EWCA Crim 962

<sup>4</sup> 1994 S.C.C.R. 668.

1 *CONCLUSION*

2

3 179. Having rejected the account of the defence, I considered all the evidence and  
4 applied the law as I understand it. The prosecution has satisfied me so that I am sure  
5 that the defendant was the driver of the motor vehicle and drove it in a manner  
6 which was dangerous in the circumstances. There is no evidence of any mechanical  
7 failure or any occurrence causing the loss of control of the vehicle that fateful  
8 evening. The standard of driving fell below the standard of a competent and careful  
9 driver in the circumstances of the case. The danger, both real and potential, would  
10 have been obvious to a competent and careful driver at the time. The road had but  
11 two lanes, was not straight, and was traversed by traffic. I accept that passengers  
12 within the car were alarmed at the manner of driving and indeed it was such that  
13 any bystander would be alarmed at the extent of the speeding in the circumstances.  
14 In addition, by this dangerous driving, the defendant caused the death of Ms. Karen  
15 Edwards.

16

17 180. I therefore find Ms. Dorlisa Piercy guilty of the offence with which she has been  
18 charged, that is causing death by dangerous driving.

19

20 Dated this the 21<sup>st</sup> February 2014

21

22 *C. Beswick*

23



25 Madam Justice Carol Beswick (Actg.)  
26 Acting Judge of the Grand Court  
27