IN THE GRAND COURT OF THE CAYMAN ISLANDS
IN THE CRIMINAL DIVISION

IND: NO. 17 OF 2012

REGINA

V

DORLISA PIERCY

IN OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 6TH DAY OF MAY 2014

Appearances: **Ms. Lucy Organ for the Applicant**
Mrs. Dawn Lobban-Jackson for the Crown

RULING

1. The defendant was convicted and sentenced on 21st February 2014 to a term of five years imprisonment for the offence of cause the death of Karen Edwards by dangerous driving.

2. Karen Edwards was a passenger in the car driven by the defendant and was thrown from the car when it got out of control and flipped over and over. She succumbed to her injuries and was pronounced dead at the scene of the accident. Two other passengers, along with the defendant herself, sustained serious injuries.

3. The defendant has filed an appeal against her conviction and sentence and now applies for bail pending her appeal which will not be heard until the November 2014 session of the Court of Appeal.

4. As the learned trial judge recorded at paragraph 140 of her judgment, the prosecution's case was that excessive speed of the vehicle in the particular circumstances amounted to dangerous driving causing the death of Karen Edwards.

5. There are five grounds of appeal against conviction but I am satisfied that I should be concerned with only the 4th and 5th of these at this stage; the others, I am satisfied could not meet the test for the grant of bail pending appeal. The principles governing bail pending appeal, as Mrs. Lobban-Jackson submits and Ms. Organ agrees, are fairly settled. They are recognized in *Nicoletta v R (1998) CILR 166* following *R v Watton (1978 68 Cr. App. R. 293* in these terms, dealing with an appeal against sentence:

> *"The guiding principles are those settled in R v Watton, namely, that bail should not be granted pending an appeal unless the sentence is at least prima facie, shown to be manifestly excessive or likely to have been substantially served before the appeal can be heard."*

6. Where the appeal is one also against the conviction as it is the case here, the Court of Appeal in *R v Watton* also explained that *"bail is granted only where it appears prima facie that the appeal is likely to be successful."*

7. I accept that to be a correct statement of principle as well.

8. However, it was emphasized by Mrs. Lobban-Jackson that there is a further requirement of exceptional circumstances before bail pending appeal may be granted, according to the dicta from *R v Watton*. This, she says, appears from the following passage from the judgment of Lord Justice Geoffrey Lane (as he then was) given on behalf of the Court of Appeal:

"...the true question is, are there exceptional circumstances, which would drive the court to the conclusion that justice can only be done by the granting of bail. The law has not altered. The law is as it was. Exceptional circumstances are the test...."

9. Just what kind of circumstances, beyond the prima facie showing of a ground that the appeal is likely to be successful, wold be required to meet the "exceptional circumstances" test, was not explained by the Court of Appeal. Further than regarding it as one simply laying emphasis upon the need for a clear prima facie showing of a ground of appeal which is likely to be successful, I do not see how far the exceptional circumstances test can go. That therefore, is how I will seek to apply it here.

10. The first question therefore becomes; has the defendant shown such clear prima facie grounds of appeal against conviction which are likely to succeed such as to establish that bail should be granted pending the hearing of her appeal?

11. I consider that in respect of her grounds 4 and 5 she has done so. I will briefly explain my reasons for that decision, difficult though the issues appear to be.

12. Grounds 4 and 5 are respectively that:

"4. The learned trial judge erred when she found that the vehicle was travelling at a speed greater than 65 miles per hour (at p 22 paragraph 39-43 of her judgment) and

5. that she therefore also erred when she found that the driving in the case was dangerous, citing D.P.P. v Milton, Hondle v O'Connor and McQuinn v Buchanan which are all to the effect that speed alone is not

sufficient to amount to dangerous driving – a principle recognized and accepted by the trial judge herself at paragraph 158 (p44) of her judgment."

13. The learned trial judge did indeed recognize that speed alone is not sufficient to amount to dangerous driving. Having recorded (at paragraph 151 of her judgment) that the only reliable expert evidence of speed given in the case came from the defence expert Mr. White who estimated the speed at a maximum of about 65 mph, the learned judge went on to consider the evidence of speed in the overall context of the case.

14. She made the following findings (at paragraph 152 – 159):

> *"152. However, I bear in mind and accept as true the evidence of Ms. Tamara Smith that when she looked at the gauge, the speed was such as to cause her to ask the driver to slow down. I also accept her evidence as true that Ms. Karen Edwards was also very much alert to the speed and joined in the request to slow down. It is no surprise that with the music of Kartel being turned up in the car, Ms. Tamara is not sure if their pleas were heard.*
>
> *Additional evidence of speed*
>
> *153. When I consider the expert's evidence of a maximum speed of 65 miles per hour, with the concern of the ladies about the speed, I find that the speed was at least 65 miles per hour but more probably greater.*

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

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

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

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

15. The difficulty with these conclusions rendering them amenable to argument on appeal, as Ms. Organ submits, is that having concluded that "*the speed was even greater than the 65 mph estimate which Mr. White gave*", it is not clear what the learned Judge found to be the speed when she concluded further that "*in my view, driving at such a speed in a two lane public roadway on which cars travelling in opposite directions along both lanes must properly be considered to be dangerous*".

16. Was she there referring to the maximum speed of about 65 mph estimated by the expert and which, as she said, was 33% above the speed limit; or to some greater speed of her own estimate? And, if so, based on what considerations?

17. It appears from the passages cited above from the judgment that such considerations included the alarm that had been raised by Tamara Smith and Karen Edwards because of the speed they had observed from the speed gauge. No evidence was, however, given as to what reading they saw on the gauge. Thus, any deduction from their reaction would be one of inference only that the speed must have been dangerous enough to cause them to entreat with the defendant to slow down. That inference by itself may not have been exceptionable but the judgment, at paragraph 157, also indicates that there were other considerations taken into account by the learned Judge in arriving at her estimate of speed greater than 65 mph. These were the extent of the damage of the vehicle itself and to the persons travelling in it. As the learned judged observed "*I expect that the roof of the car is not lightly ripped off. The photographs which were exhibited graphically told the tale of a motor vehicle which underwent multiple impacts to almost every surface of its exterior, and some impact of its interior. The sound of the collision was so loud as to cause two witnesses to come*

racing out of their homes which was down the road and across the road. Common sense dictates that the car was travelling fast. But was the speed dangerous?"

18. This commonsensical conclusion of speed is criticized because it served as a substitute for the only reliable expert evidence – which placed the speed at about 65 mph and the very expert evidence which the learned judge had herself accepted.

19. The inference drawn from the damage done to the vehicle could itself also be criticized as having been capable of taking the conclusion no closer to one of dangerous driving: there was no evidence to support the conclusion that the damage was only consistent with speeds greater than 65 mph, or for that matter, greater than 50 mph – the legal speed limit.

20. The learned judge's resort to common sense to bolster her conclusion that the speed must have been greater than 65 mph and as being "*such a speed on a two lane public roadway on which cars travel in opposite directions along both lanes (as) must properly be considered to be dangerous*" does, in my view, give rise to an arguable ground of appeal which is likely to succeed, that she impermissibly substituted her own commonsensical estimate of speed greater than 65 mph for that of the expert whose evidence she had found to have been the only reliable evidence of speed in the case.

21. The defendant raises a clear prima facie ground of appeal that is likely to succeed and therefore meets the test for bail pending appeal.

22. That being the conclusion at which I arrive, I do not need to consider the likelihood of success of an appeal against sentence or whether a proper sentence would have been substantively served before the appeal could be heard in November 2014. I

emphasize though that my conclusions are relevant only to the question of bail and that the defendant can have no expectation of not being returned to prison, should the Court of Appeal reject her appeal.

23. Bail is offered to the defendant on the following conditions:

(1) The defendant will reside at her known place of residence at 10 Nettie Rivers Lane, West Bay (where I am told she must be present, in any event, to care for her 17-month old baby).

(2) She must provide a bond in the amount of $20,000 with one or two sureties and her own recognisance.

(3) She must surrender her passport to the Clerk of Courts and must stay away from the airport and sea ports.

(4) She will observe a curfew between the hours of 8 pm and 8 am and must wear and be monitored by means of an electronic tag.

(5) She must report to the West Bay Police Station at 6 pm – 7 pm on Mondays and Fridays.

Hon. Anthony Smellie
Chief Justice

GRAND COURT CAYMAN ISLANDS