

Reported

IN THE CAYMAN ISLANDS COURT OF APPEAL
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C.I.C.A. NO. 43/98
INDICTMENT NO. 68/95

CHERYL O'DONOGHUE

V

REGINA

BEFORE: The Rt. Hon. Edward Zacca, P.
 Justice James Kerr, J.A.
 Justice Gerald Collett, J.A.

Mr. Norman Hill, Q.C. instructed by Mr. Ross McDonnough for Appellant
Mr. Adam Roberts for the Crown

The 9th & 10th days of December, 1998

Kerr, J.A.

In the Grand Court, before Mr. Justice Smellie (who is now the Honourable Chief Justice) and a jury on the 29th May, 1998, the appellant was convicted on two counts for the offences of Causing Death by Dangerous Driving on the night of the 19th September, 1995 on Eastern Avenue, George Town contrary to Section 67(1) of the Road Traffic Law. On each count she was sentenced to three years imprisonment, the sentences to run concurrently and disqualified from holding or obtaining a Drivers Licence for five years from the date of conviction. From these sentences the appellant appealed on the ground that the custodial sentence was excessive.

In sentencing the appellant the Learned Chief Justice said:

“by their verdict the jury has accepted the account of events as given by the eye witnesses for the prosecution and there can be no question but that the deceased women were simply walking along out of the way of traffic when they were struck from behind by the defendants vehicle.

Implicitly also the jury has accepted that her manner of driving was a result of the consumption of too much alcohol. I must also proceed to sentence on the basis that the jury accepted the evidence of the witness Yvonne Baker, who sought to intervene to prevent the defendant from driving but was put off by her meaningless assurance she would not.”

In the Learned Chief Justice’s opinion she showed a “selfish disregard for the safety of other road users”. He then went on to give consideration to the matters urged in mitigation, inter alia, the appellant’s unquestionable character, her ability to be able in the future to continue to live a productive and constructive life, that she had no previous convictions for any driving offence and because the appellant’s first trial had been aborted due to circumstances beyond her control he would apply the sentencing tariff existing in November, 1997 when the trial was aborted.

Before the Learned Chief Justice, Mr. Hill, in his plea for mitigation referred to and compared the sentences in a number of cases of causing death by dangerous driving and the guidelines and categorizing of aggravating factors as identified in **R v Boswell (1984) 3 All E.R. 353** of the good character of the appellant and no previous driving offences. His address before us was to a great extent an encore with additions in his references to dicta in English cases. He referred to the English cases:-

1. **R v Shepherd; R v Wernet (1994) 2 All ER 242** as illustrative that where alcohol was the aggravating factor it should be considered less serious than where there is evidence that the legal limit of the ratio of blood to alcohol had been exceeded and thereby creating an offence of strict liability.

2. **R v Willetts (1993) RTR 252** which was illustrative that notwithstanding that three persons were killed by the dangerous driving of the defendant the sentence was reduced on appeal.

Now although there was no scientific evidence of the ratio of alcohol to blood in the appellant there was cogent evidence to support the inference that regardless of the amount of alcohol imbibed, the effect contributed to the dangerous manner of her driving and was an aggravating factor.

As regards the number of deaths, one cannot ignore the practical approach in the following observations of Schiemanns, J. in **R v Pettipher (1989) Cr App R 321 at page 323** "It is rather illogical in some ways, it might be thought, that a given piece of driving which causes three deaths should be punished more heavily than the identical piece of driving causing one death, or indeed causing no death at all, given that no one suggests this appellant was deliberately driving so as to kill people. The fact is that in the public estimation it is a factor which people in general do take into account. People do regard killing three as more criminal than killing one. That is a fact of life which this court recognises."

In the instant case we see no good reason for departing from the approach that where in cases of causing death by dangerous driving there are aggravating circumstances a custodial sentence is appropriate - **R v Guilfoyle (1973) 2 All ER 844**. However on the basis that the older policy and tariff is applicable to the instant appeal we considered the range of sentences that have been passed in similar cases of the relevant period such as **Rivers v R (1988 - 89) CILR 77** – 18 months imprisonment, **D.K Ebanks v R (1984-5) CILR 432** reduced on appeal from 4 ½ years to 2 years imprisonment..

Ebanks The Caymanian Compass Aug 5, 1998 3 years imprisonment, and **R v McKenzie** (alcohol and speeding) – 18 months imprisonment.

Having regard to all the circumstances and the range of sentences in similar cases we are of the view that a sentence of 18 months imprisonment would be appropriate.

Accordingly the appeal against sentence is allowed and the sentence varied to 18 months imprisonment on each count to run concurrently and to commence on the 29th May, 1998.

In all other respect the sentence is affirmed.


ZACCA, P.

KERR, J.A.


COLLETT, J.A.

