LEGAL . 1989

IN THE CAYMAN ISLANDS COURT OF APPEAL

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C.I.C.A. #45/89 -Criminal

PHILIP CHRISTOPHER McCOY

v.

REGINA

BEFORE: The Honourable The President, Mr. Justice Edward Zacca
The Honourable Mr. Justice Telford Georges, J.A.
The Honourable Mr. Justice James S. Kerr, J.A.

APPEARANCES:

For the Appellant: Mr. Norman Hill, QC, and Mr. Graham Hampson
For the Crown: Ms. Lorna Dilbert

Heard: November 27, 1989

JUDGMENT

The appellant pleaded guilty to causing death by dangerous driving. On the facts presented the trial judge found that the appellant, while driving along Ocean Drive from Rum Point towards Old Man Bay, had collided with great force with the deceased, Hortor Ainsley McCoy. At the moment of collision the appellant's vehicle was on the wrong side of the road.

The collision took place some time in the early hours of December 27, 1988. The body of the deceased was not discovered until 8:10 a.m. on December 29, 1988. Under caution, the appellant admitted having been involved in the accident. He had, apparently, been aware that he had hit something but had not been aware what it was that he had actually hit. He thought it may have been a tree. The body had been found in bushes off the road. The appellant had not reported the accident.

On his behalf in mitigation it was urged that he had fallen asleep at the wheel, as a result of which he had driven the car off the road and collided with the deceased.

The appellant was at the time a fireman. He had worked a double shift that day, volunteering to do so in place of a fellow worker who had reported ill. His spell of duty had begun at 8:30 a.m. December 25 and had ended at 1:40 p.m. on December 26, 1988.

There was evidence that he had taken a diet pill, Duromine. In some cases such pills can induce drowsiness. The appellant had also been drinking alcohol--part of the celebration of the Christmas season. The trial judge concluded that, giving the appellant the benefit of every possible doubt, the appellant's consumption of alcohol was a factor which contributed to his dangerous manner of driving. He also noted that the details of the accident would never be known, partly because of the appellant's failure to report it as he should have done. There is no evidence that he ever returned to the area to discover what he must have hit.

The trial judge concluded that the case fell into the more serious category of cases of causing death by dangerous driving. This cannot be seriously challenged. Applying the tests laid down in R. v. Boswell (1984) 3 All E.R. 353 and adopted by this Court in Rivers v. Regina, CICA #6 of 1988, there were two aggravating factors: the appellant's driving was affected by the consumption of alcohol, and he had failed to stop at the time of the accident or to report it. This was not a case of momentary inattention or misjudgment. A custodial sentence was inevitable.

Mr. Hill in effect submitted that the length of the sentence imposed--18 months--and the period of disqualification ordered--five years from the date of the appellant's release--tend to confirm that the trial judge had failed to give due weight to the mitigating factors.

He stressed particularly the fact that the deceased was a second cousin of the appellant. They lived in the same district and were close. The fact that the appellant had caused the death of his cousin would forever be reason for remorse. The sense of family solidarity had been shaken.

He urged that the diet pill and long hours of work had contributed to the effect of the alcohol. The fact that the appellant had volunteered to work for an absent colleague was important.

The trial judge did take these factors into account. Nothing new has emerged in this appeal.

In the case of Boswell (supra) Lawton L.J. stated at p.357:

> "...where aggravating features or an aggravating feature is present then a custodial sentence is generally necessary. At present, as already indicated, the statistics seem to show that the general maximum term is about 12-18 months as imposed by the courts. It is not easy to see why this should be so. Drivers who, for example, indulge in racing on the highway and/or driving with reckless disregard for the safety of others after taking alcohol should understand that in bad cases they will lose their liberty for two years or more."

The sentence of 18 months does reflect the mitigating factors in this case.

Clearly, this sentence will affect the appellant's career prospects and this is unfortunate. The fact is that while under the influence of drink he drove in such a manner as to cause loss of life. The penalty imposed must reflect societal disapproval of driving after the consumption of alcohol.

The appeal will accordingly be dismissed and the sentence affirmed.

Delivered the 30th day of November, 1989. by