IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN.

C.I.C.A. NO. 6 OF 1988

31-03-88
Reported

BEFORE: THE HON. MR. JUSTICE ZACCA, PRESIDENT
THE HON. MR. JUSTICE GEORGES, J.A.
THE HON. MR. JUSTICE KERR, J.A.

DAVID DICK RIVERS V. REGINA

Mr. Timothy Shea for Appellant.
Mr. Brian Sharman for Respondent.

31st March 1988

GEORGES, J.A. REASONS FOR JUDGMENT

At about 11.00 a.m. on Sunday 14th June, 1987 the appellant was driving his Pontiac Firebird motor car on the Batabano Road towards Morgan's Harbour. There was a drizzle. As he approached what he described as a medium left hand bend he saw a scooter approaching from the opposite direction. He estimated his speed at 30 miles per hour.

He negotiated the bend and then as he described it the car began to slide to the right. He noticed then a second scooter following the first. He was too close to take any action to avoid hitting it. The rider of that scooter, a young girl named Lori Leigh Carrol, was thrown into the air and fell some 80 feet away. The scooter hit the windscreen. The Pontiac rolled over at least once and perhaps twice and came to rest 158 feet from the point of impact.

Lori Carrol suffered massive injuries including extensive brain damage from which she died. The appellant was charged with causing death by dangerous driving to which he pleaded guilty. Clearly he had been travelling on a wet road at an excessive rate of speed.

At the hearing a number of factors was urged on his behalf in relation to the sentence to be imposed. He was just 20 years old at the date of the accident. He had continuously been employed since leaving school at 16. He had no previous convictions. He had been involved in youth club work helping to improve his community and had never been a lay about. He came from a respectable family and lived at home with his parents.

The trial judge concluded on the evidence that the appellant's speed must have been grossly excessive and that the appellant had driven with scant regard for the safety of other road users. The sentence had to be a deterrent to others who speeded on the roads in high powered cars. There had to be a realisation that a car was a lethal weapon. He imposed a sentence of 18 months imprisonment.

On appeal Mr. Shea has repeated the matters of mitigation

mentioned in the Grand Court and has drawn attention to a number of decided cases.

The appellant, at the date of the accident, had held a full driving licence for just two weeks. Previously he had held two provisional licences for consecutive six month periods. He was an inexperienced driver and clearly should not have been driving at the speed at which he was.

In R.v. Guilfoyle [1973] 2 All E.R. 844 at page 845 the English Court of Appeal formulated guidelines for sentencing in such cases which are equally applicable here -

> "Cases of this kind fall into two broad categories; first, those in which the accident has arisen through momentary inattention or misjudgment, and secondly those in which the accused has driven in a manner which has shown a selfish disregard for the safety of other road users or of his passengers, or with a degree of recklessness. A subdivision of this category is provided by the cases in which an accident has been caused or contributed to by the accused's consumption of alcohol or drugs."

The Court then categorises drivers into those with good records and those with bad records and continues -

> "In the judgment of this Court an offender who has been convicted because of momentary inattention or misjudgment and who has a good driving record should normally be fined and disqualified from holding or obtaining a driving licence for the minimum statutory period or a period not greatly exceeding it, unless of course there are special reasons for not disqualifying. If his driving record is indifferent the period of disqualification should be no longer, say two to four years, and if it is bad he should be put off the road for a long time. For those who caused a fatal accident through a selfish disregard for the safety of other road users or their passengers or who have driven recklessly, a custodial sentence with a long period of disqualification may well be appropriate, and if this kind of driving is coupled with a bad driving record the period of disqualification should be such as will relieve the public of a potential danger for a very long time indeed".

Mr. Shea accepted that this case fell closer to the second category defined in R. v. Guilfoyle than to the first.

The guidelines laid down in R.v. Guilfoyle (supra) were applied in R. v. Boswell [1984] 3 All E.R. 353. There at page 357 grossly excessive speed was noted as an aggravating factor and the court stated -

> "The situation where there are not aggravating features present is that, so far as sentencing is concerned, a non-custodial penalty may well be appropriate, but 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 to 18 months as imposed by the courts. It is not easy to see why this should be so".

Clearly the facts of this fall within the category of that requiring a custodial sentence.

Two local cases were cited. In John Francis v. Regina Criminal Appeal 11/83, Kerr, J.A., speaking for the court stated at page 8 -

> " In every case sentence is conditioned by the circumstances of the case. We would not wish to lay down any hard and fast rule with respect to sentence, but we would accept as a common sense approach that where on a conviction of causing death by dangerous driving there is a reckless disregard for the life and safety of others, a custodial sentence would seem to be the proper sentence; and where, however, there is no such evidence, no evidence of excessive speed, no course of dangerous driving and that it was one short instance where the driver 'fell from grace' that we ought to consider imposing a less harsh sentence".

In that case the appellant had overtaken a car as he travelled north on West Bay when he collided with a car travelling south. The driver of that car was killed.

Kerr, J.A., stated -

> "We are of the view that in this case there was no reckless disregard, no excessive speed and it was but one moment where the appellant perhaps in an unguarded moment pulled out to overtake when it was dangerous so to do. We consider his age, we consider that he has had previous convictions but the last was in 1977.....".

On these facts a sentence of 3 years imprisonment was set aside and a fine of $1500 with an alternative 3 months hard labour was substituted.

This case clearly fell within the first category defined in R.v. Guilfoyle and the principles propounded by Kerr, J.A., echo accurately the guidelines there laid down.

Finally, Mr. Shea referred us to the Queen v. D.K. Ebanks [1985] C.I.L.R. 432, we noted with pleasure that this was the first occasion that this new series of reports had been cited to us.

The accused had driven a powerful car through a built up area of George Town when he lost control of it, skidded to the right side of the road and knocked down two small boys one of whom was killed. He pleaded guilty and was sentenced to a term of imprisonment of 4 1/2 years and disqualified from driving for 10 years. A note at the end of the report states that on appeal the sentence was reduced to one of 2 years and the period of disqualification to one of 7 years.

Mr. Shea contended that the sentence of 18 months was manifestly severe having regard to the 2 years sentence in the case of D.K. Ebanks where there was an additional aggravating factor namely, drink. We are unable to agree.

In R.v. Boswell (supra) the Court indicated that in "bar cases" where a defendant had driven with reckless disregard for others

after taking alcohol he should expect to lose his liberty "for two years" or more. In a case of Lyons [1971] 55 Cr. App. R 565 a young man had gone driving with four friends. He drove at such a speed that he was urged to slow down but did not. He lost control of the car as he attempted to negotiate a bend and an accident resulted in which one of his friends was killed. It was the view of the Court that a proper sentence would be of the order of 12 - 18 months.

Clearly the sentence of 4 1/2 years in D.K. Ebanks was excessive and had to be reduced. The same cannot be said of the sentence in this case.

We are understandably concerned that a young man who has been so well recommended should have to undergo a punishment which is clearly severe. But deterrent sentences are necessary if the problem of death on the road is to be effectively addressed. Accordingly the appeal must be dismissed.