28.11.85

(Criminal)

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
IN COURT, BEFORE THE HON. MR. JUSTICE HULL

CASE NO: 1802/85
IND. NO: 29/85

AG	LD	SCC	CC1	CC2	CC3	CC4	Lt	Ps	For Ac & To	NFA Put Away

DEC 04 1985
LEGAL DEPARTMENT
CAYMAN ISLANDS

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LEGAL DEPARTMENT

REGINA V. DENWARD KENNEDY EBANKS

Causing death by dangerous driving

SENTENCING

Mr. Ebanks, I have quite a lot to say on this matter. First of all, you have pleaded guilty to a charge of dangerous driving causing death.

The immediate facts of the case were that about 8 o'clock in the morning on a Saturday, the 29th of June, you lost control of a car in Mary Street in George Town. The evidence is that you skidded to the right hand side of the road, and in doing so you knocked down two small boys. One of them was killed. He was ten years of age.

I note what your counsel has asserted about the amount of alcohol you had, and I proceed on the basis that the actual alcohol level in the blood is at best, a very rough and ready guide, but the fact of the matter was that you were arrested on suspicion of driving while intoxicated, and three-quarters of an hour later the breath reading was 210 milligrammes of alcohol to 100 millilitres of blood which speaks for itself.

Further points about the actual accident I want to refer to are first that it was in Mary Street, George Town, which is a built-up area of George Town, and it is just that kind of street where small children are likely to be playing, or to be on the street, on Saturday mornings. The car involved was a Pontiac Trans-Am, which is an American car of a fairly substantial size. It was mentioned on your behalf that the road was wet - that there was water on the road - and the road was also curved. Well, I don't hold those against you, but in fact I would regard those as aggravating factors, not as mitigating factors. In those circumstances, there is a duty to drive more carefully.

I have to say that this is a clear case of criminal recklessness as I think your counsel on your behalf has accepted. It was not a case of momentary inadvertence, and you really had no business being near the wheel of a motor car.

Well, that's all I want to say about the accident as such. I want to come on to other aspects of the matter though.

I want to say that the prevailing accident rate in the Cayman Islands is a matter for grave concern. In 1983, there were six deaths on the road. In 1984, there were seven deaths. In 1985, up to but not including the accident in which you were involved, there were eight deaths, and since then, since the accident in which you were involved, there have been eleven more deaths. And of course that is to say nothing of the injuries that have been caused during that time. The Cayman Islands are a territory with (I think I am correct in saying) a resident population of no more than about twenty thousand people.

I want to explain to you why I refer to those figures, so you are under no misunderstanding about it. The reason I have referred to the death toll after your accident is this, and it is only this: to point out that any concern which people may have had during the first half of the year was clearly justified, and that what happened in the first half of the year, the trend in the first half of the year, could not be called transient or abnormal. I also want to say that I recognise that the fact that X number of people are killed on the road doesn't mean that in every case somebody has been criminally responsible. I am also conscious of the fact that this year, you are the only person to have been appeared before this court on a charge of dangerous driving causing death.

But I also want to go on and say that it would be unrealistic to suppose, first of all that motor cars in the Cayman Islands are not an actual and very serious source of danger to the public. Secondly, that quite clearly alcohol is a major factor in traffic accidents. And thirdly, it's clear to my satisfaction that the actual accident rate is relevant to this in the sense that it shows that there is a high prevailing degree of wilful, reckless, careless or even simply incompetent driving at present. I think that's a matter of some notoriety for the time being.

What follows from that is that there is a need in my view for deterrent penalties, according to the circumstances of each case. I think in the case of driving that there is a special point in a deterrent penalty because we all drive, we are all at risk of being prosecuted and coming before the courts, and therefore it seems to me that deterrence does have a particular point, and that so long as this situation continues there is going to be a need for deterrent sentences.

Well, that's all I want to say stating the position at its highest against you.

I now want to take into account the mitigation in the matter. You are 21 years of age. I accept that you are a person of previous good character. You have pleaded guilty to this charge, and in doing that you have done two things. First of all, in my own eyes, in the present situation where it's important that people who break the traffic laws should be brought to account,

you've admitted it candidly, you have come around to admitting it, and I do take that into account. You have avoided the need for proving the case in that sense. And secondly, although it wasn't mentioned by your counsel, I am sure he would have had it in his mind, but you have spared the family the ordeal of a trial and in particular the possibility that this young boy's brother may have had to come and give evidence. And I take that into account.

I also do accept that for some reason - I note the reason that Counsel has stated - but for some reason you seemed to have started to get into difficulties from May of this year. As far as whether or not you are remorseful is concerned, I don't want to dwell on this, but I don't think I need to tell you that it was a foolish thing to do, to come to court on first occasion having consumed alcohol, but I don't intend to penalise you further for doing that. As I said to Mr. Levy, it simply weighs in my mind that that makes one wonder how contrite you really are. It makes one ask whether or not or if it is just a sense of the predicament you are in. But I am going to deal with you on the basis that I have seen you in court two or three times, two times since, and in view of what Mr. Levy has said, I am going to deal with you on the basis that you have since come round to coming to terms with what has happened. I note also the fact that you have offered amends to the family in one respect.

Well, having said all that, I have to tell that I do intend to impose a deterrent penalty. It will be a custodial penalty, and I think it will be longer than your counsel may have anticipated. It seems to me that if you have genuinely come to terms with this matter, you will keep in view that you might lose your liberty for a time, but this boy has lost his life, and I am sure you will understand the significance of that.

I have to say that my own view in the present circumstances, in the absence of mitigating factors, is that a deterrent sentence of 6 to 6½ years would be justified for an offence of this nature. In your case, I make allowances for mitigation. I initially had in mind a sentence of 5 years, but I think also that in your case you are the first person who has come before this court this year on such a serious charge and I ought to make further allowance for the fact that you have pleaded guilty in those circumstances.

What I want to do is to serve warning now that anybody who comes to court before me, so long as this situation continues, in future for an offence committed after today (and I emphasise after today) will not receive the same allowance as I am giving you in this respect.

But in all the circumstances I have to say that the sentence I impose is 4½ years imprisonment to run from the 26th of November, which was the date I think you surrendered into custody of this year. So far as disqualification is concerned, I think that you should be disqualified from driving until you are well into your years of maturity, and the period which I propose to disqualify you for, from holding or obtaining a driving licence, is a period of 10 years from the date that you are released from prison.

D. Hull.

David Hull
Puisne Judge

28th November, 1985.