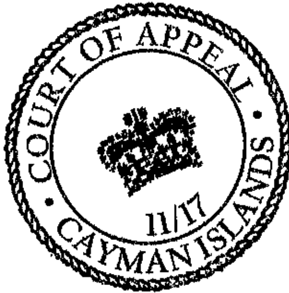
IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 2/2017
IND. 112/2014
C#06985/2014

BETWEEN:

Dilroy A. Linwood Watler

Appellant



- and -

HER MAJESTY THE QUEEN

Respondent

BEFORE: The Rt. Hon Sir John Goldring, President
The Rt. Hon Sir Bernard Rix, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal

Appearances: Ms. Prathna Bodden, Samson Law / Mr. Scott Wainwright for DPP

JUDGMENT

Revised from transcript of oral judgment 8 November 2017 and Approved Released 13 April 2018

Sir Alan Moses, J.A.:

1. Cases involving the death of someone as a result of a course of driving are always tragic. This case is particularly tragic. It involved the death of this appellant's brother.

2. The appellant had been with his brother at a bar until eleven o'clock on the evening of 9th August 2013. The appellant drove away from the bar with his brother and, whilst driving along Seaview Road, he reached a speed of some 91.55mph. It was

a fairly straight piece of road, but the speed limit was 25mph. He failed to take a bend and crashed into a wall, resulting not only in the death of his own brother, Deuteron Linwood Watler, who was a passenger, but also in his own very severe injuries.

3. The sentencing judge, Mr Justice Quin, sentenced the appellant, on his plea of guilty, on 21st January 2017. For reasons that we shall underline later, the lapse of time between the occasion when the driving took place in August 2013 and January 2017 is significant.

4. The judge in his sentencing remarks described the driving as "*terrifyingly excessive*". That was plainly correct. He took as a starting point a sentence of five years and then, having regard to the mitigation, imposed a sentence of three years and four months.

5. It is against that sentence that the appellant — for we say straightaway we give permission to appeal — appeals. It is argued that the judge took far too high a starting point and failed to give sufficient weight to the mitigation.

6. The judge looked at the guidelines for causing death by careless driving and appears to have increased the sentence to which they refer, having regard to two factors: first of all, that in the Cayman Islands the maximum is higher than in the United Kingdom; and he also regarded the offence as aggravated by the fact that the defendant had no driving license and was driving a friend's car without consent. He did take into account the tragic circumstances that this appellant, who was only 18 at the time, had killed his brother and his best friend, who was also a young man, and that therefore his mother, who was to be dependent upon this appellant in the future, had, in effect, not only lost one son by death, but another son by incarceration. Both the family and this appellant will have to live with this tragedy for the rest of their lives.

7. It is necessary for us, in considering whether the sentence was excessive, to consider the guidelines relevant to causing death by careless driving. However, before looking at those guidelines, and indeed the authorities on which both the prosecution and the defense rely in pursuing this appeal, to consider the charge.

8. The charge, as we have said, was causing death by careless driving. The speed, however, was such that it is difficult to conceive as to how the charge was not one of causing death by dangerous driving. We emphasise the fact that it was not, is something to which we must remain resolutely loyal. Neither the court at first instance, nor this court, can raise the sentence merely because the court thinks that the defendant ought to have been charged as causing death by dangerous driving. But the fact that it had not done so may have caused the judge difficulty, and certainly will always cause difficulty in cases where the appropriate charge is causing death by dangerous driving.

9. The reason why it was a plea of guilty to causing death by careless driving was explained to us during the course of this appeal. It apparently stemmed from the defense showing the prosecution a case which the defense contended was authority for the proposition that speed alone is not sufficient to amount to dangerous driving. That proposition has only to be stated to show that it cannot be correct. Very high speed, vastly over a speed limit, and certainly speeds in the region of 90mph anywhere on this island, might reasonably be regarded as dangerous driving.

10. However, the authority on which the defense relied was apparently ***R. v. Dorlisa Piercy,*** Ind. No. 17 of 2012, a decision of Beswick J. (Act'g), of 1st February 2014.

11. During the course of that case, the judge did make the remark "*speed alone is not sufficient to amount to dangerous driving*" (see para. 158), and then went onto find that the driving was dangerous in that case. This case is not authority for anything. The judge plainly was not attempting to advance some general proposition and,

for the reasons we have given, we cannot concede that any judge would think that was a sensible general proposition of wide application.

12. But, nevertheless, the fact of the matter is that causing death by careless driving was the charge to which this appellant pleaded guilty, and it is vital that we make clear that we will be loyal to the fact that it was that charge, and not a more serious offence, to which he pleaded guilty.

13. In England and Wales the guideline for causing death by careless or inconsiderate driving of the highest category, which is one where the driving falls not far short of dangerous driving, provides for a starting point of 15 months' custody and a sentencing range of 36 weeks to three years. The aggravating features include taking a vehicle without consent. But, where the victim was a close friend or relative, that is an additional mitigating factor.

14. As the prosecution pointed out, the maximum in England is lower than it is in these islands, five years as opposed to seven years, but one must also bear in mind that the maximum for dangerous driving in these islands is lower, ten years rather than 14 years in the United Kingdom. As My Lord Rix JA pointed out in argument, the sentencing range would have a starting point of some three years' custody for dangerous driving, with a range of two to five years where there is a significant risk of danger. In those circumstances, to increase the sentencing range from three years to a point of five years seems to us to be not warranted in a case of this type.

15. We turn then to the authorities. As has frequently been said, there is a danger in over-citation of authority, which were not intended to provide propositions of general application, but we did find - to put it no higher - it worthy of note that in the England and Wales Court of Appeal Criminal Division, ***R. v. Tyson*** [2010] 2 Cr. App. R.(S) 96, for a case of excessive speed — although not as excessive speed as this — 70mph in a 60mph speed limit, a sentence was imposed on a

defendant who had 30 previous convictions for 71 offences, including various driving offences, of two years.

16. Similarly, in ***R. v. Tyro*** [2011] 1 Cr. App. R.(S.) 113, for a case which fell within the most serious category of causing death by careless driving, where two people were killed, the correct starting point was in the region of three years and the sentence was reduced to one of two years.

17. We turn then to two relevant cases within the Grand Court of the Cayman Islands. The first, ***R. v. Laureano***, a decision of 27th April 2016 by Swift J.(Act'g) Q.C., where the car was being driven, a high-performance car, at a speed of up to 60mph, in third gear, and which appeared to the Judge to be a blatant case of car racing. The sentence that was passed was, after mitigation, one of 16 months, and a guideline, in terms to which we have already referred, applied.

18. In the case of ***Tibbetts***, a decision of Dame Linda Dobbs of December 2016, heard at the time when this appellant was sentenced, the starting point was one of 18 months. This was a case where the driver struck a cyclist and failed to stop. It was therefore a case with aggravating features that raised, according to the judge, the starting point to 18 months, after taking into account mitigating factors she reduced the sentence to one of eight months.

19. It will be seen that the sentence passed in this case, particularly the starting point of five years, is substantially out of line with the sort of bracket which both authorities in England and Wales and on the island provides.

20. We take the view that the starting point in this case was excessive and that a starting point in the region of three-and-a-half to four years would have been correct. We then have to take into account a number of seriously mitigating factors. We have already referred to the obvious one, the fact that this was a beloved brother who was killed by this appellant. We also have to take into account the

devastating effect on this young man's family and that he is a young man and was only 18 at the time.

21. There is another factor to which Ms. Bodden rightly drew our attention, and that is the serious injuries from which this appellant suffered as a result of his own driving, which led to a very substantial delay, to which we have already referred, from the time when this driving took place and the time when he was fit enough to be sentenced on 21st January 2017. In other words, some three-and-a-half years when he was not fit to be sentenced, and certainly not fit to go to prison, because of his injuries. We think that delay is also a part of the mitigating factors.

22. Serious though this speed was, we think that justice can best be met by, having taken 3½ years as a starting point, substantially reducing the sentence by a year from one of three-and-a-half years to two-and-a-half years. In those circumstances, and to that extent, we allow the appeal.