

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/0008

BETWEEN:

THE QUEEN

Claimant

AND

JESSE CHARLES

Defendant

Appearances:

Mr. H. Nicholas, Counsel for the Defendant
Ms. T. Mensah, Crown Counsel for the Crown

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2010: December 2;
2011: January 18 & 19

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JUDGMENT ON SENTENCING

[1]. **BENJAMIN, J.** : The defendant, Jesse Charles, faces a charge of causing death by dangerous driving on an Indictment filed by the Director of Public Prosecutions on July 6, 2009. The Indictment alleges that on Saturday, January 10, 2009 at about 4:00 a.m., he drove motor car registration number PG 2212 along the La Toc Road in the city of Castries in a manner dangerous to the public thereby causing the death of Thomas James, contrary to Section 73 (1) (a) of the Motor Vehicle and Road Traffic Act 2003 as amended.

- [2]. At arraignment, the defendant pleaded not guilty but subsequently pleaded guilty to the offence as charged.
- [3]. The facts as stated by the Prosecution are as follows: The defendant was at Upper Level Nightclub in Rodney Bay with friends. He remained there until he left sometime after 3:00 a.m. driving the said motor-car with the deceased, Thomas James, a friend of his as a passenger. While the defendant was driving along the La Toc Road, the vehicle ran off the road and collided with a wall at the side of the road. A passing motorist observed the motor-car in contact with the wall, stopped his vehicle and approached the defendant. When he inquired of the defendant as to what had happened, the defendant told him he had fallen asleep while driving. Upon driving home after the accident, the defendant again repeated to his girlfriend that he had fallen asleep.
- [4]. The defendant's girlfriend then went to the scene of the accident and falsely identified herself to the Police as the driver of the vehicle. There was however no suggestion by the Crown that the defendant was complicit in this prevarication and accordingly it cannot be held against him and cannot be taken into account for the purposes of sentencing.
- [5]. At the time when he came upon the accident, the aforementioned passing motorist observed a man who was trapped in the left front passenger seat of the motor-car. He also observed that the man, whom he recognized as one "Thomas", was bleeding from his head and left arm.
- [6]. Thomas James was taken to the Victoria Hospital where he succumbed to his injuries. A post mortem was performed and the findings confirmed the cause of death as being brain damage secondary to frontal brain injury consistent with a motor-vehicular accident.
- [7]. The defendant is 44 years of age and has resided with his girlfriend for the past nine (9) years. His fourteen (14) year old son from a prior relationship has lived with him since his parents died. They live in a familial setting in the Goodlands area.

- [8]. The defendant has been employed by Stephen Trucking Company for the past seven years. In addition, in 2006, he has established his own small business in customs brokerage trading as "Charles Customs Services". The business has one other employee. The defendant has had the benefit of secondary education. He attended the Vieux-Fort Junior Secondary School; however, he did not advance to the Senior Secondary School but left school at the age of sixteen (16) years.
- [9]. Upon leaving school, he first assisted his mother in managing the canteens she ran and also worked with his father doing carpentry and masonry. Subsequently he worked as a labourer in the construction industry. He has worked as a security guard and as a store-keeper and time keeper on a construction site before venturing into the area of trucking.
- [10]. The defendant was born and raised in Vieux-Fort town and in Aupicon, Vieux-Fort by his parents. His father was a Pastor of the Pentecostal Church. His siblings described him as being loving, helpful, kind and disciplined. They also reported him as having been attentive to his parents in their illness and as being generally dependable. His girlfriend confirmed this trait of dependability and added that he is a good provider although she herself is gainfully employed. The defendant and his son share a close relationship and his son regards him as a good father.
- [11]. The defendant, his girlfriend and his son share communal living space with his girlfriend's family with whom he has developed a familial relationship.
- [12]. The Court is grateful to the Probation Officer who compiled a thorough report for the use of the Court in sentencing. The foregoing information has been gleaned from that report.
- [13]. It has been represented to the Court by learned Counsel that the defendant is of good character and indeed the pre-sentencing report has not indicated anything to the contrary.

[14]. Section 73 so far as relevant, reads as follows:

"73 (1) No person shall

- (a) cause the death of another person by dangerous driving; or
- (b)

(2) A person who contravenes section 1 (a) commits an offence and is liable on conviction on indictment as follows:

- (a) to imprisonment for a term of not less than five years and not more than fifteen years; and
- (b) in addition, to the sanction specified in section 106".

[15]. At first blush, subsection (2) (a) can be read as imposing a mandatory minimum sentence of five years with a maximum of fifteen years imprisonment upon conviction for causing the death of another person by dangerous driving. This issue came up for consideration in the case of Thelbert Edwards v The Queen Criminal Appeal No. 3 of 2006 (St. Lucia). Having embarked on an analysis of the provisions of the Criminal Code of St. Lucia 2004 and the Motor Vehicle and Road Traffic Act No. 10 of 2003 of the Criminal Code, Gordon, JA concluded the Criminal Code restored the discretion of the Court to sentence a convicted person by the imposition of a fine in preference to the minimum term of five years imprisonment. His Lordship went on to examine the matter in the context of Section 5 of the Constitution of Saint Lucia and ruled that section 73 (2) (a) is in breach thereof by the purported imposition of a mandatory minimum sentence of five years imprisonment for the offence of causing death by dangerous driving, as such imposition constitutes inhuman and degrading punishment.

[16]. The majority of the Court imposed a fine of \$4,000.00 with no additional period of disqualification from driving beyond the suspension period of almost three years. However, Gordon, JA cautioned Sentence Courts in the following terms:

"45. Although I have found the minimum sentence of five years imprisonment on conviction to be grossly disproportionate and hence unconstitutional, nevertheless, I cannot ignore that parliament has sent a strong signal of its view of the increasing seriousness of the offence of causing death by dangerous driving. The maximum sentence has been increased from 10 years under the 1994 Motor Vehicles and Road Traffic Act to its present maximum of fifteen years. In the circumstances, the courts must give efficacy to the mood of Parliament as expressed through legislation. I would opine that unless good reason or special circumstances exist, an offender convicted of causing death by dangerous driving must expect a custodial sentence on conviction".

[17]. In making submissions on behalf of the defendant, learned Counsel drew the Court's attention to the judgment of Lord Woolf, CJ on R v Cooksley et al (2003) ECWCA Crim. 996. In the said consolidated appeal, the Criminal Division of the Court of Appeal of England and Wales examined the guidelines for sentence in cases of causing death by dangerous driving as advised by the Sentencing Advisory Panel in February 2003. It is salutary to repeat the foreword of the Chairman of the Panel, Professor Martin Wasik. He wrote:

'This offence causes particular difficulty for sentencers. By definition, it is one which always gives rise to extremely serious harm: the death of at least one victim (and in some cases serious injury to others). Understandably this often leads to calls from victims' families, and from the wider community, for tough sentencing. On the other hand, an offender sentenced for causing death by dangerous driving did not intend to cause death or serious injury, even in the extreme case where he or she deliberately drove for a prolonged period with no regard for the safety of others. The Panel believes that new guidelines will help sentencers to strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence. The panel drew up its initial proposals on the basis that the outcome of an offence, including the number of people killed, was relevant to the sentence, but that the primary consideration must always be the culpability of the offender. That was supported

by the majority of the respondents to our consultation paper, and it remains our view. Two of the detailed points in the panel's advice deserve particular mention. One is the significance of multiple deaths. Although the number of people killed is often a matter of chance, there are (as some of our consultees pointed out to us) cases where the offender has knowingly put more than one person at risk, or where the occurrence of multiple deaths was reasonably foreseeable. In such cases, we recommend that the occurrence of more than one death should be treated as a more seriously aggravating factor. The second point is the inclusion of "driving when knowingly deprived of adequate sleep or rest" in the list of factors that would aggravate the seriousness of an offence. Under previous sentencing guidelines, "briefly dozing at the wheel" was seen an example of a "momentary dangerous error of judgment", indicating a less serious offence. The panel's view (again supported by consultees) is that falling asleep is more likely to aggravate than mitigate the seriousness of an offence, because drivers do not normally fall asleep without warning, and the proper course of action for motorist who feels drowsy is to stop driving and rest.'

The remarks I consider to be overwhelmingly instructive for Saint Lucia.

[18]. Statistic provided by the Traffic Department of the Royal Saint Lucia Police Force reveals that fatalities as a result of traffic accident are as follows:

2005	6 persons
2006	8 persons
2007	9 persons
2008	9 persons
2009	11 persons
2010	8 persons

It is to be noted that in addition to the imposition of a minimum sentence, the Act increased the maximum sentence from ten years to fifteen years. The clear message being sent by the legislature is that road fatalities are to be treated with enhanced seriousness by the Court.

[19]. The Sentencing Advisory Panel provides an inexhaustive listing of the relevant aggravating factors and mitigating factors, from which learned Counsel drew in the course of the plea in mitigation of sentence.

[20] The significant aggravating circumstance contributing to the accident in the present case was correctly identified as the fact of the defendant by his own admission having fallen asleep while driving. Given that he was at a night club until the wee hours of the morning, there being no evidence of alcohol consumption, it can be concluded without irrationality that the defendant was deprived of adequate sleep or rest at the time of the accident. As suggested by the foreword set out in paragraph 17, the defendant must have felt the effects of sleepiness prior to the collision. The second aggravating factor was the defendant being an unlicensed driver though he was in possession of a learner's permit. In response to the Court, the Crown informed that the defendant has not been convicted for any other offences relating to this accident or otherwise. Accordingly, the Court is constrained from treating this matter as an aggravating factor.

[21] The mitigating factors were highlighted to the Court and can be conveniently listed as follows:

- (a) the defendant has no previous convictions;
- (b) the good character of the defendant as previously alluded to;
- (c) the defendant's plea of guilty which obviated the need for a trial; and
- (d) the genuine remorse of the defendant who turned himself in at the Police Station and freely admitted to falling asleep while driving.

In addition, learned Counsel has assured the Court that the defendant has not entered a defence to the civil suit filed on behalf of the estate of the deceased and is fully prepared to meet the obligations of any ensuing judgment.

[22] The Sentencing Court must strike an appropriate balance between the level of culpability of the offender and the magnitude of the harm resulting from the offence. There must be a focus upon the overall culpability of the convicted defendant. In this regard, there must be a weighing of the aggravating circumstances vis-a-vis the mitigating factors.

[23] The defendant was not injured in the accident but someone died in the accident. The pre-sentence report chronicles the remorse of the defendant who bemoans the death of his friend whose good qualities he recalls. He is prepared to do anything to make good on his obligation to the family of the deceased.

[24] There has been no indication as to whether the defendant has driven since the accident. It is to be assumed that he is still without a full driver's licence.

[25] Taking all matters as stated into consideration towards sentence, I do not consider this case to be one fit for custodial sentence. The sole aggravating factor is the momentary lapse of the defendant in falling asleep while driving. The mitigating factors are substantial and provide good reason for the imposition of a fine in preference to a sentence of imprisonment.

[26] Accordingly, the defendant is fined the sum of \$10,000 or in default to serve three (3) years imprisonment. The said fine shall be paid on or before the 15th day of April, 2011. In addition, the defendant is disqualified from holding or obtaining a driver's licence for all classes of vehicles for a period of five (5) years from the date of sentence.

KENNETH BENJAMIN
HIGH COURT JUDGE