

6 pages.

ROYAL COURT
(Samedi Division)

2nd May, 1995.

83.

Before: The Bailiff and Jurats
Myles, Orchard and Vibert.

The Attorney General

- v -

Anthony Kevin Hall

Sentencing by the *Assise Criminelle*, following conviction on 31st March, 1995, on a not guilty plea to

1 count of manslaughter

AGE: 39

DETAILS OF OFFENCE:

Having consumed alcohol so that the level in his breath was 80 m.g.s. (equivalent to 184 m.g. per 100 mls of blood i.e. 2 1/4 times the limit), the accused drove up the Route des Gênets, St. Brélade, and struck a fifteen year old cyclist who was freewheeling on the white lines in the centre of the road preparatory to turning right into La Petite Route des Mielles. The accident took place at the junction. The defendant stated in evidence that he never saw the cyclist and that the first thing he was aware of was when his windscreen smashed as the cyclist struck it. There was some evidence of poor earlier driving in that the accused reversed into a car parked at Ouaisné car park, causing minor damage to the number plate of the other car, and he had also driven round the corner where Ouaisné Hill divides with the road to Portelet in such a manner as to cause an on-coming car to swerve and brake to a stop with its nearside in the rainwater gully.

DETAILS OF MITIGATION:

There was no suggestion of excessive speed immediately prior to the impact (the evidence was that the defendant was doing 30 to 35 mph), nor of his being on the wrong side of the road, swerving, etc. It was accepted that the lighting conditions were difficult in that the sun was in the west and a shadow was cast across the Route des Gênets by some trees immediately before the junction.

PREVIOUS CONVICTIONS:

Minor convictions including one for driving a motor vehicle without due care and attention and one speeding but all were more than fifteen years earlier.

CONCLUSIONS:

The Crown offered three possible approaches:

- 1) On the basis of previous sentencing levels the conclusions would have been 2 1/2 years.

2) On the basis of the current English sentencing levels, the conclusions would have been in the region of 5 years or more.

3) The other alternative was to increase sentencing levels in the light of some of the factors which had influenced the English courts, but not to the same extent as in England.

The Crown opted for the third approach and moved for three years.

**SENTENCING AND OBSERVATIONS
OF THE COURT:**

In future cases of causing death by the driving of a motor vehicle when excess alcohol had been consumed, the Court would apply the latest English guidelines. However, having regard to the previous level of Jersey sentencing, it would not be appropriate to pass such a sentence in this case. Conclusions granted.

The Attorney General.

Advocate T.J. Le Cocq for the accused.

JUDGMENT

THE BAILIFF: The Court has found this a very difficult case. It has considered carefully the various authorities laid before it by the Attorney General but insofar as they give guidelines for the appropriate length of sentence we have found them difficult to reconcile with each other. The English authorities relate to a statutory framework where the maximum sentence for offences of causing death by dangerous driving, or causing death by reckless driving and of causing death by careless driving, with excess alcohol in the body have been laid down by the English Parliament. We are imposing sentence for the common law offence of manslaughter in this jurisdiction where there is no statutory maximum. These observations apply even to the Jersey cases of Hunter (19th September, 1988) Jersey Unreported and O'Neill (4th December, 1992) Jersey Unreported where the sentences appear to have been influenced unduly, in the view of this Court, by the statutory maxima obtaining in England. It is clear that there has been a dramatic shift in sentencing policy in England albeit in the context of statutory changes. But, those statutory changes were brought about by increasing concern in England at the incidence of death caused by drivers with excess alcohol in the body. We have no statutory maximum here, as we have said, but we think that similar social considerations apply in Jersey. There is an increasing realisation of the dangers of driving with excess alcohol in the body.

5 In our judgment the sentences imposed in the past for motor manslaughter, in particular where alcohol was a factor, have been too low and ought to be significantly increased. We therefore answer the Attorney General's request for guidelines by stating that the guidelines given by the Court of Appeal in England in R.-v-Rayner; R.-v-Wing (the Attorney General's references nos. 24 and 30 of 1994), (1995) RTR 119 are guidelines which we are prepared to adopt in this jurisdiction.

10 It is true, as the Attorney General has rightly submitted, that no sentence can compensate the family of the victim for the devastating loss which they have suffered. It is also true that the defendant did not intend the tragic consequences of his actions.

15 Our duty is to impose a sentence which reflects the criminality of the defendant, in the particular circumstances of the case. In assessing the degree of the defendant's criminality, we have to balance the aggravating factors against such mitigation as there may be. Examples of relevant aggravating factors and mitigating circumstances were helpfully given in the Judgment of Lord Lane, Chief Justice in R.-v-Boswell [1984] 3 All ER 363 C.A. in the following terms:

25 *"One may, perhaps, pause for a moment to consider what factors in the driving may tend to aggravate the offence and what factors tend to mitigate it. The following, amongst others, may be regarded as aggravating features. First of all the consumption of alcohol or drugs, and that may range from a couple of drinks to what was described by the Court in R.-v-Wheatley (John) (1982) 4 Cr.App.R. (S) 371, as a motorised pub crawl. Second, the driver who races. Competitive driving against another vehicle on the public highway, grossly excessive speed, showing off. Third, the driver who disregards warnings from his passengers, a feature which occurs quite frequently in this type of offence. Fourth, prolonged, persistent and deliberate course of very bad driving. (One of the cases today illustrates that). A person who, over a lengthy stretch of road ignores traffic signals, jumps red lights, passing other vehicles on the wrong side, driving with excessive speed, driving on the pavement, and so on. Next other offences committed at the same time and related offices, that is to say, driving without having had any licence, driving whilst disqualified, driving whilst a learner driver without a supervising driver and so on. Next, previous convictions for motoring offences, particularly offences which involve bad driving or offences involving the consumption of excessive alcohol before driving. In other words, the man who demonstrates that he is*

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experience. Next, where several people have been killed as a result of a particular incident of reckless driving. Then behaviour at the time of the offence, for example failure to stop or, even more reprehensible, the driver who tries to throw off the victim from the bonnet of the car by swerving in order that he may escape. Finally, causing death in the course of reckless driving carried out in an attempt to avoid detection or apprehension, and again, in one of the cases today we find an illustration of that.

On the other hand the mitigating features may be numbered as follows amongst others. First of all the piece of reckless driving which may be described in the vernacular as a 'one off', a momentary reckless error of judgment. Briefly dozing off at the wheel, see *R.-v-Beeby* [1983] 5 CR.App.R.(S) 56, to which reference was made in the course of argument. Sometimes failing to notice a pedestrian on a crossing. Next, a good driving record will serve the defendant in good stead. Good character generally will also serve him in good stead. A plea of guilty will always be taken into account by the sentencing court in favour of the defendant. Sometimes the effect on the defendant, if he is genuinely remorseful, if he is genuinely shocked. That is sometimes coupled with a final matter which we wish to mention as being a possible mitigating factor, namely where the victim was either a close relative of the defendant or a close friend, and the consequent emotional shock was likely to be great".

We observe that those categories of aggravating features and mitigating circumstances are not exclusive. Lord Lane was itemising examples of aggravating features in the context of reckless driving, whereas in this jurisdiction, it is sufficient to prove grossly negligent driving on the part of the defendant.

There are two aggravating features in this case. The first, clearly, is the consumption of alcohol. Hall had drunk alcohol during the course of the afternoon, and at the time of the collision, was found to have eighty micrograms of alcohol in his breath, that is more than twice the permitted concentration of alcohol.

The second aggravating feature was the previous bad driving of the defendant, which ought to have alerted him to the fact that he was a danger to the public.

In mitigation, we accept that Hall is a man of good character. We have read carefully the references which Counsel has provided, which testify to the fact that he is, in general, a responsible and useful member of society. He was not driving at

an excessive speed, and the driving conditions were far from ideal. He is not, of course, entitled to the mitigation of a guilty plea.

5 We have already stated that we consider the guide-lines
recently given by the Court of Appeal in England are ones which we
ought to follow. The application of those guide-lines would lead
to the imposition of a higher sentence than that for which the
10 Attorney General has moved. We are not, in this case, however,
going to impose such a sentence because we feel constrained by the
very much lower sentences imposed recently by this Court,
especially in the case of O'Neill which, might fairly be
characterised as a worse example of bad driving than is the case
in this instance.

15 We give notice, however, that in future we propose to impose
sentences for motor manslaughter which reflect fully the public's
disapproval of driving whilst unfit, following the consumption of
alcohol.

20 Hall, the result of your driving after drinking to excess was
the snuffing-out of an innocent young life. You will have to
live with the consequences of your action and it is clear from the
report which we have read, that you have yet to come to terms with
25 it.

30 For the reasons given, we grant the conclusions and we
sentence you to imprisonment for three years. We also impose a
disqualification, as moved for by the Attorney General, of five
years.

Authorities

R.-v-Boswell & other appeals [1984] 3 All ER 353 C.A.

5 A.G.-v-Hunter (19th September, 1988) Jersey Unreported.

A.G.-v- O'Neill (4th December, 1992) Jersey Unreported.

10 Attorney General's Reference Nos. 14 & 24 of 1993 (Shepherd,
Wernet) (1994) 15 Cr.App.R (S) 640.

R.-v-Rayner; R-v-Wing (Attorney General's Reference Nos. 24 & 32
of 1994) [1995] RTR 119.