

**IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE**

INDICTMENT No. C12 of 2019

BETWEEN:

THE QUEEN

and

[1] MR. CARLOS MARTINEZ

Defendant

Appearances:

Ms. Natasha Mohamed, for the Crown

Mr. Hurl Hamilton, for the Defendant

Dates:

Judgment date: 2023: May 2

Hearing date: June 5

Sentencing date: June 8

JUDGMENT ON SENTENCE

[1] CUMBERBATCH. HON. MR. FRANCIS M.; J: On 2 May 2023, accepted the guilty plea of Mr. Carlos Martinez who was indicted by the Director of Public Prosecutions on two counts for the offence of manslaughter by negligence contrary to sections

108(1)(a)(b)¹ and Manslaughter as defined in section 116(1)(2)² of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize Revised Edition 2020 for that he on the 6 October 2018, between miles 72 and 73 of the George Price Highway in the Cayo District caused the deaths of, Liarinette Cowo and Cindy Cowo, as a result of his negligent driving of a Toyota Rav 4 motor vehicle bearing licence plate BMP-C-08715.

[2] At his arraignment, the convicted man entered a plea of not guilty to both counts, however, after much toing and froing he entered a plea of guilty to both counts on the said indictment.

The Facts

[3] The agreed facts are that on the 6 October 2018 at around 3:00 a.m., the convicted man was driving his said vehicle along the George Price Highway traveling from Benque Viejo Town to Succotz Village. At some stage, he lost control of the said vehicle which ended up in the Mopan River. At around 10:15 a.m., the police retrieved the said vehicle from the river and the motionless bodies of two females were found on the floor behind the back seat. They were subsequently identified as, Liarinette Cowo and Cindy Cowo, the Deceased persons herein and were pronounced dead later that same day by Dr. Mai at the San Ignacio Community Hospital.

¹ The Criminal Code Chapter 101 of the Substantive Laws of Belize Revised Edition 2020

“108. -(1) Every person who commits manslaughter– (a) by negligence shall be liable to imprisonment for five years; (b) by any other cause shall be liable to imprisonment for life.

² The Criminal Code Chapter 101 of the Substantive Laws of Belize Revised Edition 2020

“116. -(1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter. (2) If the harm was negligently caused, he is guilty only of manslaughter by negligence”.

[4] On 8 October 2018, postmortem examinations were carried out on the bodies of the Deceased by Dr. Mario Estrada Bran who opined that the cause of death of both Deceased persons was drowning as a consequence of road traffic accident. Investigations were carried out and upon conducting a test of a urine sample provided by the Accused it was discovered that his urine ethanol concentration was 204 milligrams of ethanol per 100 millilitres of urine.

[5] The provisions of section 81 of the *Motor Vehicles and Road Traffic Act*³ CAP 230 of the Revised Edition of the Laws of Belize 2020 states that, the prescribed and allowable limit of ethanol is 107 milligrams per 100 millilitres of urine.

The Hearing

[6] The Court held a sentencing hearing to determine matters of sentence and compensation to the relatives of the Deceased persons. At the hearing, Defence Counsel called one person as a character witness for the convicted man. That witness testified that he has known the convicted man from since around the year 2011. He describes him as a very upstanding person in the community and he asked the Court to consider his background and be as lenient as possible with him.

[7] The convicted man also addressed the Court and stated his remorse and further stated that he knows he cannot face the family of the Deceased with the pain they feel.

[8] Defence Counsel, Mr. Hamilton in his address reminded the Court of the hitherto good character of his client and stressed that he has no previous convictions prior

³ *Motor Vehicles and Road Traffic Act*³ CAP 230 of the Revised Edition 2020 of the Substantive Laws of Belize section 81(2) (b) “107 milligrams of alcohol in 100 millilitres of urine”.

to what occurred on that fateful night. He reminded the Court that the Accused has a wife and family and is lawfully employed as a small contractor.

[9] Mr. Hamilton, drew the Court's attention to a judgment obtained by the father of the Deceased Cindy Cowo against the convicted man in the sum of forty-four thousand one hundred and sixty dollars (\$44,160.00) which, however, has not been satisfied as yet. He states that his client intends to commence payments on that judgment on the completion of the criminal proceedings. Counsel further stated that the convicted man is willing to compensate the family of the Deceased person Liarnette Cowo in a sum to be determined by this Court.

[10] Ms. Mohammed, for the Crown addressed the Court on the aggravating factors in this matter the main one being that the Accused was drunk at the time of the accident, hence, he made no effort to rescue the two Deceased who were passengers in his vehicle from drowning. She also tendered victim impact statements from the parents of the two Deceased which vividly describes the pain and suffering endured by the untimely death of their daughters.

The Law

[11] I find the following to be the Aggravating and Mitigating factors herein.

Aggravating Factors

1. The loss of two innocent lives that night.
2. The Accused was under the influence of alcohol at the time when he was the driver of the vehicle involved in the fatal accident.
3. The Accused was either unwilling or unable to rescue the Deceased person from the vehicle prior to their demise.
4. The seriousness of the accident.

Mitigating Factors

1. The early guilty plea offered by the Accused.
2. The remorse expressed.
3. The offers of compensation made to the bereaved family members.
4. The hitherto clean criminal record of the Accused.
5. The Accused's good character.

[12] I have carried out a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

Sentence

[13] It is a sad reality within the CARICOM region that drinking and driving is a regular practice notwithstanding the attendant dangers therein. This case is another situation which highlights the deadly consequences of this unlawful and absurd practice.

[14] Though the Court must show its abhorrence for this kind of dangerous conduct, I must also consider the mitigating factors in the convicted person's favour as stated aforesaid, especially the early guilty plea which spared the family members of the Deceased from having to relive and litigate the horrific events of that fateful day.

[15] Accordingly, the Accused is fined the sum of seven thousand five hundred dollars (\$7500.00) on or before the 3 January 2024, failing which he shall serve a period of imprisonment of nine months, and he shall pay compensation to the family of the Deceased, Liarinette Cowo, in the sum of six thousand dollars (\$6000.00) within, on, or before the 1 September 2023, failing which the family of the Deceased may take the necessary steps to recover the same in the Criminal Courts.

[16] The Court has advised the parents of Cindy Cowo in respect of whom the Supreme Court has made the order aforesaid on what steps they could take to secure the fruits of their judgment in the civil action brought in the Supreme Court aforesaid.

Hon. Mr. F M Cumberbatch

Justice of the High Courts