

IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N3 of 2021

BETWEEN

THE KING

and

SHAUN DORTCH

Accused

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Ms. L. Cuello for the Crown

Mr. Hurl Hamilton for the Accused

2024: Oct 28th, Oct 29th, Oct 30th, Oct 31st

RULING ON NO CASE SUBMISSION – CAUSING DEATH BY CARELESS CONDUCT CONTRARY TO SECTION 108(2)

[1] **MORGAN, J.:** Shaun Dortch (“the Accused”) was indicted on one count of Causing Death by Careless Conduct contrary to **section 108 (2)** of the **Criminal Code**¹ (“the Code”).

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020

- [2] The indictment alleges that the Accused caused the death of Ezequiel Lopez Leon by carelessly driving his Mazda CX7 SUV on the 9th day of March 2019, between miles 50 and 51 along the Phillip Goldson Highway, in the Orange Walk District.
- [3] The trial began with the arraignment of the Accused on the 28th October, 2024 before this Court pursuant to section 65 of the **Indictable Procedure Act² (the IPA)**. The Accused was then placed in the charge of the jury.
- [4] The Crown on its case led the viva voce evidence of five witnesses and there were eight agreed witnesses pursuant to **section 106 of the Evidence Act³**.
- [5] At the close of the Crown's case, Counsel for the Accused made a no case submission on the 1st limb of the **R v Galbraith⁴** contending that the Crown has failed to lead sufficient evidence to satisfy an essential element of the charge i.e. the Crown has failed to lead evidence that the Accused acted carelessly on the 9th March 2019 when the deceased was struck by the Accused's Mazda SUV.
- [6] Counsel for the Crown replied to the no case submission for the defence arguing that though the case against the Accused was a circumstantial case on that issue, there is sufficient evidence before the jury for a properly directed jury to infer carelessness on the part of the Accused in the accident.
- [7] The Court having considered the argument, now gives its ruling on the no case submission.

Elements of the Offence

- [8] Section 108 of the Code provides as follows:

108.-(1) Every person who commits manslaughter–

(a) by negligence shall be liable to imprisonment for five years;

² Cap 96 of the Substantive Laws of Belize Revised Edition 2020

³ Cap 95 of the Substantive Laws of Belize Revised Edition 2020

⁴ [1981] 1 WLR 1039

(b) by any other cause shall be liable to imprisonment for life.

(2) Every person who causes the death of another by any careless conduct not amounting to negligence, as defined in this Code, commits an offence and is liable to imprisonment for two years.

[9] From a plain reading of the Code in the context of this indictment the Crown must therefore prove the following:

- a) That Ezequiel Lopez Leon is dead.
- b) That the death of Ezequiel Lopez Leon was caused by the Accused Shaun Dortch while driving his Mazda SUV,
- c) The Accused was careless in his driving of his Mazda SUV on the Phillip Goldson Highway on the 9th March 2019.

[10] The meaning of the phrase Careless Conduct in the context of **section 108 (2) of the Code** was helpfully examined by the Court of Appeal in **Cardinal Smith v The Queen**⁵. In **Smith** the Court of Appeal held that careless conduct constituted a failure to any degree, which is less than grave, to observe the standard of care expected of a reasonably prudent driver in the circumstances surrounding the commission of the offence.

[11] In deciding what would constitute a failure to observe the standard of care to any degree which is less than grave, the tribunal of fact is entitled to consider all the circumstances surrounding the commission of the offence. A failure to observe a provision of **the Motor Vehicles and Road Traffic Act**⁶ or **the Motor Vehicles and Road Traffic Regulations**⁷ does not automatically make a driver guilty of careless conduct as what is being appraised by the tribunal is the quality of the driving at the time. It is however a fact that can be considered in deciding whether the driving was indeed careless.

[12] A principle analogous to '**res ipsa loquitur**' may be applied in establishing careless conduct if in the absence of a satisfactory explanation to the contrary, the facts point inferentially to carelessness beyond

⁵ Criminal Appeal no. 35 of 2005 para 30

⁶ Cap 230 of the Substantive Laws of Belize Revised Edition 2020

⁷ Cap 230s of the Substantive Laws of Belize Revised Edition 2020

reasonable doubt. This principle was accepted and endorsed by the Court of Appeal in **Smith** as applicable to charges laid under section 108(2) of the Code.

The Law on No Case Submissions

[13] The test for no case submissions was set out in **Galbraith (supra)** by Lord Lane CJ as follows⁸:

[Limb 1]

“If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.”

[Limb 2]

“The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.

There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.” [emphasis mine]

[14] This test is applicable whether the Crown seeks to prove the case with direct or circumstantial evidence or a mixture of both. Circumstantial evidence is evidence of one or more facts (such as motive, opportunity or fingerprints left at or near the scene of the crime) from which other facts (which may be the other facts in issue, or secondary or collateral facts) may then be inferred or deduced⁹.

⁸ Galbraith page 1049

⁹ Halsbury's Laws of England 2021 Criminal Procedure Volume 28 General Principles of Evidence para 453

[15] With respect to cases where the case for the Crown depends wholly or partially on circumstantial evidence, on a proper application of the test in **Galbraith** the Crown is not required to show that the jury could not reasonably reach any alternative inference contended for. The question is whether it is properly open to the jury to reach the inferences contended by the Crown¹⁰.

[16] This approach was adopted by the English Court of Appeal in **Goddard v R**¹¹ where Aikens LJ stated as follows at para 36:

We think that the legal position can be summarised as follows: (1) in all cases where a judge is asked to consider a submission of no case to answer, the judge should apply the 'classic' or 'traditional' test set out by Lord Lane CJ in Galbraith. **(2) Where a key issue in the submission of no case is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the exercise of deciding that there is a case to answer does involve the rejection of all realistic possibilities consistent with innocence.** (3) However, most importantly, the question is **whether a reasonable jury, not all reasonable juries, could, on one possible view of the evidence, be entitled to reach that adverse inference. If a judge concludes that a reasonable jury could be entitled to do so (properly directed) on the evidence, putting the prosecution case at its highest, then the case must continue; if not it must be withdrawn from the jury.**

[17] The phrase "taking the evidence at its highest" was examined in the Australian authority of **Questions of Law Reserved on Acquittal**¹² where King CJ at page 5 after considering what the phrase meant stated as follows:

*"If there is direct evidence which is capable of proving the charge, there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be. **If the case depends upon circumstantial evidence, and that evidence, if accepted, is capable of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is capable of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion***

¹⁰ Blackstone's Criminal Practice 2025 D16.64

¹¹ [2012] EWCA Crim 1756 at paragraph 76

¹² (1993) 61 SASR 1

of guilt beyond reasonable doubt, or to put it another way, could not exclude all hypotheses consistent with innocence, as not reasonably open on the evidence”.

[18] The power to withdraw a case from the jury is a power that should be exercised sparingly and only in appropriate circumstances as a trial judge must be careful not to encroach on the territory of the jury as the tribunal of fact. Therefore, the trial judge in considering a case of no case to answer should proceed on the premise that the inferences most favorable to the prosecution, which are reasonably open, are drawn. Inferences of course being common sense conclusions reasonably drawn from the facts adduced before the jury.

Case for the Crown

[19] The Crown’s main witness Jacqueline Jones testified that on the 9th March 2019 at around 7 pm the Accused was driving on the Phillip Goldson Highway headed to Belize City on the way back from a weekend in Chetumal, Mexico. The Accused was driving a dark coloured Mazda CX7 Sports Utility Vehicle and he had two passengers his wife Michelle Dortch and herself. Michelle Dortch was beside the Accused in the front passenger seat and Ms. Jones was behind her in the back seat. While travelling through Orange Walk on the Phillip Goldson Highway they got to the 24-hour gas station in the vicinity of the Belize Sugar Industries (BSI) factory. At that location there was a speed bump, and the Accused slowed down his vehicle to mount the speed bump and continued driving. The Accused negotiated the corner on the road shortly after the bump and then proceeded driving on towards Belize City. Upon reaching the straight portion of the road, there was an oncoming vehicle which had its high beam on. The Accused dipped his lights to alert the other driver to the fact that his high beam was on. Shortly after the Accused dipped his lights, the Accused and Jacqueline Jones heard a bang and the Accused asked, “What the hell was that?”. She did not see anything after hearing the bang. Upon hearing the bang, the Accused continued driving. A short while after the Accused stopped the vehicle on the side of the road and was about to turn back when she saw lights coming from a police vehicle. The officers stopped behind the Mazda SUV and they went to the driver’s side where they informed the Accused that he had knocked down someone back in the area where they had heard the bump. The Accused explained that he was turning around the vehicle to see what had transpired. The officers asked the Accused for his driver’s licence and then they asked him to come out of the vehicle and they handcuffed him. The officers

then told the Accused, Michelle Dortch and herself that they would be taken back to the scene. A police officer drove the Mazda SUV with Michelle Dortch and Jacqueline Jones inside of it back to the scene while the Accused was placed in the police vehicle and conveyed back to the scene. While at the scene, Jacqueline Jones remained in the Mazda SUV along with Michelle Dortch while the police took the Accused out of the police vehicle. While in the vehicle she saw a body on the roadway. Eventually the police officers asked Ms. Jones and Mrs. Dortch to go into the vehicle as the Mazda SUV needed to be driven back to the police station. Jacqueline Jones saw the body being removed from the roadway, but she couldn't say where the body was put. When they arrived at the police station, she and Michelle Dortch were left outside while the Accused was taken inside. Whilst outside she observed the damage to the Mazda SUV which was a dent at the right side of the windshield and the bonnet. The windshield looked broken. Eventually she was called in when it was her time to give a statement to the police. Under cross examination Jacqueline Jones estimated the speed that the Accused was driving at after slowing down at the bump and at the time that she heard the bump to be about 40 miles per hour.

[20]WPC Patricia Espinoza testified that on the night of the 9th March 2019 around 7:10 pm she was in a marked police vehicle with Corporal James Waight and Special Constable Edwards Swift by the Chinese store on the Northern Highway at Carmelita Village. This Chinese store was located on the right-hand side of the road headed towards Belize City. At that time, they received a wireless transmission about a traffic accident at Tower Hill Village with the vehicle involved being a dark, blue coloured SUV. While the driver reversed the vehicle in the compound of the Chinese store by the name of Resource Supermarket, she saw two SUVs travelling in the direction of Belize City. They began to follow the two vehicles. The Special Constable who was driving began to overtake the dark in colour SUV putting on his emergency lights. That is when the driver of the dark coloured SUV drove to the extreme right of the road and stopped. The vehicle stopped about 1 mile on the outskirts of Carmelita Village. This was about three miles from where the scene of the accident was. The driver was a male person in a white t-shirt, long blue jeans pants and white sneaker who she later identified as the Accused. The Accused came out of the driver's side and appeared nervous. WPC Espinoza noticed that the front windshield of the dark coloured SUV was cracked on the driver's side and the front bumper dented also on the driver's side. WPC Espinoza then approached the Accused and informed him that he was involved in a road traffic accident and that he would be taken back to the scene. The Accused was placed in the back seat of the police vehicle. WPC Espinoza drove the Accused's vehicle back to the scene, in the car with her was the

wife of the Accused and another woman. When WPC Espinoza arrived at the scene, she saw the body of a male person lying motionless bleeding by the face with an abrasion to his forehead and a fractured left foot. The male person was wearing a long jeans pants, red t-shirt and a long sleeve with blue stripes. Also on the road was a red in colour bicycle that was in two pieces, a single side of a boot and a yellow hat. The front of the bicycle was located on the right-hand side of the roadway about 25 yards from the body. The back wheel of the bicycle was located about 30 yards from the body. The distance from the boot to the body was about 25 feet and the distance from the yellow hat to the body was also about 25 feet. WPC Espinoza also observed that the area was dark. After the scene was processed, she conveyed the vehicle to the Orange Walk Police Station.

[21] Retired Corporal James Waight testified that on the night of the 9th March 2019, he was with WPC Espinoza in Carmelita village parked in front of a Chinese establishment by the roadside. While seated inside the vehicle a wireless transmission was received of a traffic accident by Tower Hill by the BSI factory which involved a burgundy vehicle. They stayed in the area for about 5 minutes when they observed two vehicles travelling towards Belize City. The 2nd vehicle matched the description of the vehicle from the wireless transmission. They immediately set chase, and the driver put on the police lights and siren and the vehicle was stopped about a mile from where they were parked. When the vehicle was stopped, he spoke to the driver and the driver came out. The driver was accompanied by two female passengers. One in the front and one in the back. Cpl Waight told the driver about the report of an accident which had occurred, and the driver told him that he was travelling on the said road by Tower Hill close to BSI factory and apparently someone threw a stone on his vehicle, and he didn't stop because he was afraid that he would get robbed and he was accompanied by the two females. He told the driver about his rights. Cpl Waight noted that the front windshield was cracked on the driver's side and the fender was broken. The left side of the front fender was broken. The vehicle was a Mazda CX7 SUV. The driver gave his name as Shaun Dortch, and he was later identified by Cpl Waight as the Accused. Cpl Waight told the Accused that he would have to be taken to the scene, and he agreed. He was then placed in the back of the police vehicle. Cpl Waight then drove the vehicle to the scene by following the police vehicle that was ahead of him. He couldn't see clearly as the windshield was cracked. At the scene were other police officers who had already arrived at the scene. At the scene Cpl Waight observed a Hispanic male person laying on the right-hand side of the road. He was wearing a blue jeans pants and a white shirt. The male person had blood coming out of his head. There was also a red bicycle which

was in two parts on the roadway. The front portion of the bike was about 25 feet from the body on the right-hand side of the road. The bicycle had damages on the back wheel and the front was totally damaged as it had broken off completely. The back wheel was located on the right side of the road as well. After the scene was processed the body was loaded in the police mobile and Cpl Waight and the civilian driver took it to the morgue at the Orange Walk Hospital where Dr. Deville pronounced him dead on arrival at 9:53 pm.

[22] Cpl Gaspar Tuz testified that on the 9th March 2019 he was attached to the Orange Walk police station in the traffic unit section. He was performing duties at the Orange Walk Police Station when information as received of a road traffic accident on the Phillip Goldson Highway. He proceeded to the scene of the accident between miles 50 and 51 on the highway. When he arrived there he saw a motionless body of a male person facing down on the right hand side of the highway. The motionless body was lying face down with abrasions and swelling to his forehead, a cut wound under his chin and a fracture on both upper feet. He was dressed in a white long-sleeved shirt with blue lines. Also on the scene was a yellow hat, a bicycle split in two, a single black boot and a black bicycle seat. At the scene there was also a dark in colour Mazda CX7 SUV parked on the left-hand side of the roadway headed towards Orange Walk. The Mazda CX7 had a broken windshield on the driver's side, a dent in the left-hand side of the hood, a cracked left front head lamp, a dislocated lower light on the left-hand side of the vehicle and scrape marks on the front bumper on the left-hand side of the vehicle. He approached a parked police vehicle where he was introduced to the Accused. He asked him if he was the driver of the vehicle, and the Accused said yes. Cpl Tuz asked him what happened to the vehicle. The Accused indicated that he thought someone had stoned his vehicle causing the crack but due to the area being dark and the fact that two females were with him, he didn't stop. Cpl Tuz told him that he suspected he had been involved in a road traffic accident and cautioned him. He also asked the Accused to be a witness to a sketch plan of the scene and the Accused agreed. At the scene was also Mr. Oscar Valladerez who took some pictures of the scene. Cpl Tuz drew his sketch plan of the scene of the road traffic accident where measurements were taken from various points. The sketch plan was not drawn to scale. It was signed by Marvin Lopez, the son of the deceased who identified his body at the scene, the Accused and Cpl Tuz. Cpl Tuz estimated that the scene of the accident was about 150 yards from the bump by the 24-hour gas station. Cpl Tuz escorted the Accused to the Orange Walk Police station where he took a urine sample from the Accused for testing with the consent of the Accused. On the 10.3.2019 Cpl Tuz requested the assistance

of Mr. Ruben Vargas Justice of the Peace in witnessing the recording of an interview from the Accused. After JP Vargas spoke with the Accused and the Accused confirmed that he was still willing to do the interview, Cpl Tuz again informed him of the reason for his detention, cautioned him and informed him of his constitutional rights. Cpl interviewed the Accused asking him 15 questions which he voluntarily answered and thereafter the Accused, JP Vargas and Cpl Tuz signed those notes of interview. In his notes of interview, the Accused indicated that while driving on the Phillip Goldson Highway he encountered a problem where he thought someone had stoned his vehicle and his mind went blank. On the 13th March 2019 Cpl Tuz visited the Northern Regional Hospital morgue and witnessed the post mortem examination of the deceased conducted by Doctors Roque Blanco and Loyden Ken. On the 17th September 2019 Cpl Tuz formally arrested and charged the Accused with causing death by careless conduct.

[23] On the 10th March 2019 the Accused gave a caution statement to Sergeant Daniel Teck in the presence of Thomas August JP. Sergeant Teck had been asked to assist in the recording of the caution statement from the Accused. The Accused indicated as follows in his caution statement inter alia:

"I was headed to Belize City coming from Chetumal and when we reach Orange Walk, which at the time I had three passengers. My wife and two of her friends, I dropped one in Orange Walk and proceed southwards to Belize. **A little after crossing the bump by BSI another vehicle was heading North wise in the opposite direction. I dipped my light three times to notify the other driver because he had on his high beam. The vehicle never response causing my vision to be poor because of the high beam. Then when the vehicle reached close, I felt an impact to the left side of my vehicle causing damage to the windshield on the left driver's side. I then continued because I did not know what happened and at the time I had two females with me, and I did not want anything to happen to them. I then drove to an area that was well lighted for safety purpose and I pulled to the right-hand side of the road to turn back and come to the police station when my wife satisfied me that she saw flashes of light red and blue on the left side behind us....."**

[24] Doctor Loyden Ken testified that he conducted the autopsy on the deceased and the cause of death of the deceased was because of the complete dislocation of the 3rd cervical vertebrae and the 4th thoracic vertebrae because of multiple blunt force trauma injuries due to a road traffic accident. Doctor Ken indicated that a high velocity impact would be needed to dislocate the 3rd cervical vertebrae and the 4th thoracic vertebrae. A high velocity impact according to the literature is an impact above 30 miles per

hour. Doctor Ken also said that the area of direct impact with the vehicle was on the lower leg of the deceased. After the autopsy was finished Dr. Loyden Ken took samples of blood and vitreous fluid from the body of the deceased to have the samples tested for ethanol.

[25] On the 10th October 2019 the samples were analysed showing that the deceased had 156 milligrams of ethanol (alcohol) per 100 millilitres of blood and 183 milligrams of ethanol (alcohol) per 100 millilitres of vitreous fluid.

[26] The sample taken from the Accused was also tested and there was no alcohol found in his system.

[27] At the scene of the accident Oscar Vallederez took several photographs including photographs of the body of the deceased, the broken bicycle, the yellow hat, the bottle of Coca Cola and the single black boot.

Analysis

[28] On the Crown's case, certain uncontested facts emerged. These are:

- a) On the 9th March 2019 at around 7:00 pm the Accused was driving towards Belize City in a dark coloured Mazda CX7 SUV on the Phillip Goldson Highway in the vicinity of the Belize Sugar Industries Factory in Orange Walk when he slowed down to take the bump and proceeded driving thereafter.
- b) In the Mazda SUV were two passengers along with the Accused. These were his wife Michelle Dortch and Jacqueline Jones.
- c) After passing the bump and driving at an estimated speed of 40 miles per hour between mile 50 and 51, a vehicle was headed in the opposite direction towards Orange Walk.
- d) The Accused dipped his lights to alert the oncoming vehicle that their lights were bright and as the vehicle passed, the Accused and Jacqueline Jones heard a bang as something hit the front of the vehicle.

- e) Upon the vehicle the Accused said, "What the hell was that?" and continued driving until he made it to the outskirts of Carmelita.
- f) The area where the Accused and Jacqueline Jones heard the bang was dark and had no streetlights.
- g) He was stopped by PC Espinoza, Cpl Waight and Special Constable Smith who had received a wireless transmission concerning an accident on the Phillip Goldson Highway.
- h) The Mazda CX7 SUV had a cracked windshield (on the left-hand side), a damaged left front bumper and left front fender.
- i) The Accused and his passengers were escorted to the scene where the body of the deceased was on the right-hand side of the roadway headed to Belize City.
- j) Also, on the right-hand side of the roadway headed to Belize City was a bicycle broken in two, a single black boot, a yellow hat and a bottle of coke.
- k) The deceased was identified as Ezequiel Leon Lopez at the scene by his son Miguel Lopez.
- l) The Accused and Miguel Lopez witnessed the sketch made of the roadway made by Cpl Tuz.
- m) The Accused was then conveyed to the Orange Walk Police Station where he gave an interview and a caution statement on the 10th March 2019.
- n) On the 13th March 2019 the post mortem of the deceased Ezequiel Lopez was done and the caused of death was due cervical-thoracic spinal cord traumatic injuries because of the complete dislocation of the 3rd cervical vertebrae and the 4th thoracic vertebrae due to multiple blunt force trauma because of a road traffic accident.
- o) Blood and vitreous fluid samples were taken from the deceased after the post-mortem showing that he had 156 milligrams of ethanol (alcohol) per 100 millilitres of blood and 183 milligrams of ethanol (alcohol) per 100 millilitres of vitreous fluid.
- p) Urine samples taken from the Accused at the Corozal Police Station found that the Accused had no alcohol in his system on the night of the accident.

Sufficiency of the Evidence at the no case submission stage

[29] Having regard to the uncontested facts the Crown has led sufficient evidence to satisfy the following elements of the charge:

- a) **That Ezequiel Lopez Leon is dead** – the Crown has led sufficient evidence that a properly directed jury can accept beyond a reasonable doubt that the deceased was identified at the scene by his son Miguel Lopez, and he was declared dead at the Northern Regional Hospital by Doctor Deville.
- b) **That the death of Ezequiel Lopez Leon was caused by the Accused Shaun Dortch while driving his Mazda SUV** – the Crown has led sufficient evidence that a properly directed jury can accept beyond a reasonable doubt from Doctor Loyden Ken that the deceased died because of blunt force trauma inflicted during a road traffic accident. The Crown has also led sufficient evidence that a properly directed jury can accept beyond a reasonable doubt from Jacqueline Jones, the oral utterances, notes of interview and caution statement of the Accused that it was the Accused who hit the deceased when he felt an impact to his left windshield and the Jacqueline Jones felt a bang.

[30] This no case submission however turns on whether the Crown has led sufficient evidence that a jury properly directed can find that the Accused was careless in his driving of the Mazda SUV when it collided with the deceased on the 9th March 2019. Put in another way, is there sufficient evidence to place before the jury that the actions of the Accused fell below the standard of care, which he ought reasonably to have observed in all the circumstances of the case, to a degree where he could be said to have been careless.

[31] The Accused as a driver has a duty to take reasonable care to avoid causing damage to others using or present on the highway. This duty covers not only other drivers but other road users such as cyclists. The standard of care required is the care and skill of an ordinary driver and no allowance is made for the inexperienced or learner driver. As a driver, one must also anticipate that other road users or persons on the highway may not show this requisite standard of skill, experience and care.

[32] Further, the Accused as a driver owed a duty of care to all road users to drive safely and at a speed which would allow him to safely make corrections for any hazards that may appear in his path. This is so even if the Accused may be affected by an extraneous factor such as the bright lights of an oncoming

vehicle. This was succinctly stated by the Court of Appeal in DPP v Ravell Gonzalez¹³ where Sosa JA opined at paragraph 17 that:

“.....the reasonably cautious driver will drive with the risk of being so blinded constantly in mind and will ensure that his speed will be such as to permit him sufficiently to slow down or even stop while so blinded in order to avoid colliding with any person or thing that may, though unseen, be in his path.....”

[33]The Court is careful at this stage to remember that it should not substitute its own view of the evidence for that which should properly be formed by the jury. The Court is not looking to see whether the Crown has led sufficient evidence so that all other inferences except guilt are excluded but rather whether a jury (not **the** jury) properly directed can come to a determination that the Accused was careless in his driving of his Mazda SUV on the night in question in the circumstances as he found them.

[34]The answer to this can only come from an examination of the inferences that can properly be drawn from the evidence led by the Crown taking the evidence at its highest.

[35]The evidence of Jacqueline Jones, the oral utterances and the caution statement of the Accused are of the most assistance in answering this question. They are the only live witnesses to the driving of the Accused and the circumstances which existed during the accident. Both Jacqueline Jones and the Accused indicate that the area where the accident occurred was dark and there was an oncoming vehicle that had their bright lights on, and the Accused dipped his light to let him know that the bright lights were on. Taking the evidence at its highest it is open to a properly directed jury from the evidence of Jacqueline Jones and the oral utterances and caution statement of the Accused to find that the Accused was blinded by the lights of the oncoming vehicle at the time of the collision with the deceased.

[36]A jury would then then have to consider what was the standard of care the Accused ought to have exercised in the circumstances. In the mind of the Court, with respect to the standard of care, a reasonably prudent driver being cognizant of the conditions of poor visibility that existed on the road at the time, would reduce their speed while temporarily blinded by the lights of the oncoming vehicle. There is no evidence on the Crown's case of any such defensive measure being adopted by the Accused

¹³ Criminal application for leave to appeal no. 2 of 2015

considering his duty to avoid causing damage to others on the highway. It is therefore open to a jury, if they accept the Crown's case, to find that the failure of this Accused breached that standard of care and amounted to carelessness on his part.

[37] It cannot be forgotten that Dr. Ken testified that the injuries suffered by the deceased were high velocity impact injuries which could have been caused by going over 30 miles per hour. A jury could reasonably find that in failing to slow down while blinded, the Accused fell below the standard of care expected of a reasonably prudent driver in the circumstances thereby causing harm to the deceased. If a jury were to so find, then it would be open to them to find the Accused guilty of Causing Death by Careless Conduct.

[38] While this is not the only possible line of reasoning available to a jury based on the evidence, it is a possible line of reasoning that is open to a jury properly directed on the issues as they have presented themselves.

[39] The Court must therefore reject the no case submission for the Accused having regard to its finding that the Accused has a case to answer and put the Accused to his election as required by law.

Raphael Morgan

High Court Judge

Dated: 25th October 2024