

JERSEY / JUDGMENT

AG -v- Linden [2012] JRC 161 (07 September 2012)

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JUDGMENT

COMMISSIONER: 1. In this case the defendant was driving his Lotus Elise, with one passenger, Miss Pavarniece, east along St Clement's Coast Road when the Lotus crossed into the right hand side of the road and the front offside wheel struck the kerb at a shallow angle and deflated. This caused the vehicle to rotate, possibly exacerbated by an impact with a lamp post, before striking a house on the right hand side of the road. The Lotus hit on its left hand side causing damage to the wall. Within the vehicle the gearstick and hand brake were deformed, apparently from the pressure of the defendant's body during the impact. The passenger door was broken off and Miss Pavarniece was thrown out. When neighbours arrived at the scene part of the car's bonnet was on top of her. The Lotus was not equipped with air bags and there is no evidence indicating that Miss Pavarniece was wearing a seatbelt. She was unconscious when the ambulance staff arrived and had sustained a fractured skull and what was described as a massive intra-cranial haemorrhage. She also fractured her pelvis, ribs and bones in her right hand. She never regained consciousness and there was no evidence of brain activity. Her death was pronounced at 9.50am on the 13th February, 2011, the cause being the head injury. 2. None of the experts consulted can agree what caused the defendant to lose control on this relatively straight piece of road. DC Clarke, in his report, advises that the defendant was travelling considerably in excess of 30 miles per hour, whilst the defendant's expert says that he was travelling at less than 40 miles per hour. Being constructed of lightweight materials, namely fiberglass, little is known about how a car such as this would react to an accident or a crash at speed. The defendant told a paramedic, admittedly when he had himself been injured and had morphine administered to him, that he had been travelling at 55 miles per hour. 3. The defendant was originally charged with causing death by dangerous driving but, following a hearing on the admissibility of certain evidence, the Prosecution concluded that there was no reasonable prospect of securing a conviction on this charge on the evidence available and the Prosecution have, therefore, proceeded with the alternative charge of careless driving, for which the maximum penalty is £1,000 and a disqualification. Unlike the UK, there is no offence in Jersey of causing death by careless driving. 4. The Magistrate's Court Guidelines suggest that the following matters should be taken into consideration in a case of this kind. Firstly, the driving conditions at the time, which was a moderately wet road at night with good visibility. Secondly, the nature of the area involved, which

was a residential area with many private entrances onto the road. Thirdly, the nature of the driving. Fourthly, the damage and injuries caused. In this case, the damage to the car was extensive, although non-structural, and there was also damage to property. As to injury, of course, Miss Pavarniece lost her life. 5. In the case of R-v-Simmonds

[1999] 2 Cr. App. R. 18, the English Court of Appeal has held that on an offence of this kind, a judge is entitled to take into account the consequences of the careless driving, although culpability or criminality remained the primary consideration. In that case the defendant was disqualified for one year. 6. The defendant has no previous convictions and has pleaded guilty. The Prosecution seek a fine of £500 and 12 months' disqualification. Miss Fitz accepts the financial penalty but argued against the imposition of a disqualification. 7. We have considered very carefully the mitigation put forward most comprehensively by Miss Fitz, including the lack of structural damage to the car; the fact that the bodywork was fiberglass and, therefore, susceptible to damage; the possible loss of traction as the car accelerated; the noise that a car of this kind makes when accelerating; the fact that Miss Pavarniece was not wearing a seatbelt and the fact that no alcohol was involved. We have also considered all the other points made by her and, in particular, the letters and other documents which have been provided to us. We accept that there has been delay in the case, but we can see no criticism of the Prosecution for this; this was a serious accident which required the involvement of experts and the writing of some seven reports; delay was inevitable. At the end of the day, the defendant was the driver of this car and he has pleaded to driving without due care and attention, with fatal consequences. We are, therefore, going to increase the fine suggested by the Prosecution and maintain the disqualification sought. 8. You will be fined £750 with 14 days to pay, and you will be disqualified from driving for 12 months and you will, of course, need to take the test again at the end of that period. There will be a default sentence of 6 weeks in relation to the payment of the fine. Authorities Magistrate's Court Guidelines. R-v-Simmonds [1999] Cr. App. R. 18. Page Last Updated: 25 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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