

JERSEY / JUDGMENT

AG -v- Luis [2007] JRC 233 (11 December 2007)

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JUDGMENT

THE COMMISSIONER: 1. When the Court dealt with the case of AG v Figueira

[2007] JRC 136 in July of this year it commented that fortunately it was not common for the Royal Court to have to sentence someone for having caused death by careless driving whilst under the influence of drink or drugs. In that case one passenger was killed and another seriously injured. Today, only a few months later, we find ourselves dealing with a case in which two passengers have been killed and another seriously injured. 2. The defendant had spent the evening at a bar in Gorey before driving his friends to the Havana Club in St Helier. It has been calculated, from the blood specimen he provided three hours after the crash, that he drank sufficient to put him well over twice the drink-drive limit when he left the club, namely 182 mg of alcohol per 100 ml of blood. He decided to drive five friends from the nightclub back to his accommodation in Gorey, one in the front passenger seat and the other four in the back, and this in a car designed only to seat three in the back. Driving down La Rue à Don towards Grouville Church he lost control of the car on the sweeping right hand bend coming into the village. The car slewed across the carriageway, turned side on and collided with granite pillars at the entrance to Val La Give house. Both of the passengers who lost their lives were in the back seat and it seems likely that none were wearing seat belts. Two passengers were thrown from the vehicle and one of them was pronounced dead at the scene as a result of a massive head injury. The other passenger thrown from the vehicle sustained severe concussive head injuries. He was hospitalised for three weeks and required full time care, from his wife, for two and a half months. He has sustained brain damage causing a diminution in function of his right arm and mental symptoms, including diminished concentration, attention and memory, together with emotional disturbances, with a 17% chance of developing post-traumatic epilepsy. Another passenger had to be cut from the wreckage and, despite attempts to resuscitate him, he was pronounced dead at the hospital. The other two passengers have made a complete recovery. 3. There had been a rain shower and the road was wet. The police examiner estimates that the defendant was driving at a speed greater, but not necessarily significantly greater, than 41 mph at the point he lost control. He assessed the safe maximum speed in those conditions at 35 mph and at 50 mph in daylight in dry

weather. The grip quality of the road was lower than might be expected on a road of that type, although not unusual compared with Jersey roads generally. Although not necessarily causative of the crash, the Crown accepts that this cannot have helped. There is no significant history of car crashes in this area and in any event the Crown submitted that a careful driver will adjust his driving to suit the conditions. 4. We agree with the Crown that it can only be concluded that the defendant lost control because he was driving too fast for safety and he was carrying too many passengers for safety. No doubt he drove too fast because he had consumed too much alcohol. He should not have been driving at all. 5. After the crash it was one of the passengers who crawled from the wreckage and raised the alarm at a nearby house. The defendant, on the other hand, crawled from the wreckage, switched off the lights, removed the ignition key and fled the scene. He was tracked down later and denied any involvement. When interviewed he admitted driving the car but did not make any admission of guilt. He asserted that he had drunk a maximum of five pints of Guinness and half a pint of lager between 9.30 pm that night and the crash, an amount which analysis shows was clearly far too low and he maintained these same drinking limits with the probation department. 6. The defendant pleaded guilty to counts 1 and 2 when arraigned on 17 th August, after a delay to enable him to consider expert evidence, and not guilty to count 3 - failing to stop. Two days before the trial on 17 th October he pleaded guilty to count 3. 7. As in the case of AG v Figueira we have been referred to the English Court of Appeal decision of R v Cooksley

[2003] All ER 40, which we agree provides a useful guide to determining the appropriate length of sentence for offences of this kind. 8. The Crown has taken a starting point of 5 years before construing the effect of the further aggravating factors, (j) to (p) identified in Cooksley , namely the fact that the defendant had previously committed speeding offences, albeit of a minor nature; secondly, and most significantly, that more than one person was killed as a result of the offence and, thirdly, that a third passenger suffered a serious head injury. Having regard to all these matters, the Crown would have moved, following conviction at trial, for a total sentence, on counts 1 and 2, of 6½ years' imprisonment and 6 months' imprisonment on count 3, consecutive, giving a total of 7 years. 9. The Crown takes into account in mitigation the guilty plea, although it does make the point that a full discount is not justified, as the evidence against the defendant was overwhelming. The Crown does not accept the defendant can lay claim to genuine remorse. It takes honesty to be the true hallmark of genuine contrition and insofar as he may be remorseful, that remorse has not led him to be honest, the Crown says, about the true extent of his responsibility. The Crown call for a consecutive sentence in relation to count 3 - the failure to stop. His attempted evasion in its view was a quite separate and serious piece of offending in its own right and should be marked as such. Citing the case of Figueira , which is regarded as less serious and in which the defendant was sentenced to 3 years' imprisonment, the Crown moved for a sentence of 4 years and 8 months on counts 1 and 2, concurrent, and 4 months on count 3, consecutive, making a total of 5 years. 10. In Cooksley the Court of Appeal reviewed and with the advice of the Sentence

Advisory Panel issued fresh guidelines as to sentencing for the offence of causing death by dangerous driving and careless driving when under the influence of drink or drugs. As Lord Woolf said at the commencement of the Court's Judgment:- "This offence causes particular difficulty for sentences. 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 victim's 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. This was supported by the majority of 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 Court of Appeal made the following point in relation to sentencing generally:- "A factor the Court should bear in mind in determining the sentence which is appropriate is the fact that it is important for the Courts to drive home the message as to the dangers that can result from dangerous driving on the road. It has to be appreciated by drivers the gravity of the consequences which can flow from their not maintaining proper standards of driving. Motor vehicles can be lethal if they are not driven properly and, this being so, drivers must know that if as a result of their driving dangerously a person is killed, no matter what mitigating circumstances, normally only a custodial sentence will be imposed. This is because of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence." And of course exactly the same sentiments apply to a case of careless driving whilst under the influence of alcohol. 11. The Court of Appeal agreed with the panel's view that culpability must be the dominant factor in assessing, as precisely as possible, just where in the level of serious crimes the particular offence comes. The Court of Appeal set out the following as aggravating factors from which culpability can be determined: (a) the consumption of drugs (including legal medication known to cause drowsiness) or alcohol ranging from a couple of drinks to a motorised pub crawl; (b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off'; (c) disregard of warnings from fellow passengers; (d) a prolonged, persistent, and deliberate course of very bad driving; (e) aggressive driving (such as driving much too close to the vehicle in front, persistent, inappropriate attempts to overtake or cutting in after overtaking); (f) driving while the

driver's attention is avoidably distracted, e.g. by reading or by the use of mobile telephones (especially if hand held); (g) driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills; (h) driving when knowingly deprived of adequate sleep or rest; (i) driving a poorly maintained or dangerously loaded vehicle, especially where that has been motivated by commercial concerns; The Court of Appeal then set out further factors to be taken into account as follows: Driving habitually below acceptable standard: (j) other offences committed at the same time such as driving without ever having held a licence, driving whilst disqualified, driving without insurance, driving while a learner without supervision, taking a vehicle without consent, driving a stolen vehicle; (k) previous convictions for motoring offences, particularly offences which involve bad driving or the consumption of excessive alcohol before driving; Outcome of offence: (l) more than one person killed as a result of the offence, especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable; (m) serious injury to one or more victims in addition to the deaths; Irresponsible behaviour at the time of offence: (n) behaviour at the time of the offence, such as, failing to stop, falsely claiming that one of the victims was responsible for the crash or trying to throw the victim off the bonnet of the car by swerving in order to escape; (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension; (p) offences committed while the offender was on bail. 12. The Court of Appeal then set out four starting points at paragraph 32 which can be summarised as follows:- "We have set out four starting points. No aggravating circumstances - 12 to 18 months; intermediate culpability - 2 to 3 years; higher culpability - 4 or 5 years and most serious culpability

- 6 years or over. We make clear that starting points only indicate where a person sentencing should start from when seeking to determine what should be the appropriate sentence. There is, however, a danger in relation to the higher starting points of the sentencer, if he is not careful, of double accounting. The sentencer must be careful not to use the same aggravating factors to place a sentence in a higher category and then add to it because of the very same aggravating features." In recommending the starting points the Court of Appeal observed:- "In making our recommendations to starting points we have made the allowance we consider appropriate for the fact that those who commit offences of dangerous driving which result in death or are less likely, having served their sentence, to commit the same offences again. Apart from their involvement in the offence, which resulted in death, they can be individuals who would not otherwise dream of committing a crime. They, unlike those who commit crimes of violence, also do not intend to harm their victims." In relation to careless driving under the influence of drink or drugs the Court of Appeal said this at paragraph 34:- "We have not so far mentioned the level of sentencing in cases of causing death by careless driving when under the influence of drink. The panel have not advised that such cases should form a separate category. We agree. The driving may not exhibit the aggravating factors set out in (a) to (i) of paragraph 14 of the panel's advice. In some cases the only aggravating factor will be the amount of alcohol consumed. In other cases there

may be the aggravating fact of disregarding a warning from a fellow passenger or knowingly driving a poorly maintained vehicle. There may be previous motoring convictions. There will also be cases where the driving is itself of significance in determining the appropriate sentence. It will be perfectly possible for sentencing Judges to fit cases of causing death by careless driving under the influence of drink into one of the four guideline categories which we propose." 13. Now in our view this is a case of higher culpability for which a starting point of 5 years is appropriate. We identify the following aggravating features out of factors (a) to (i), namely and firstly the level of alcohol consumed (factor (a)). The defendant in this case had consumed over twice the legal limit. Secondly, the overloading of the passengers into the back seat, thereby putting them at risk (factor (i)). However, from that starting point there are further aggravating features of this case as follows: firstly the fact that two people were killed and one person's life permanently diminished, that is factors (l) and (m); and secondly the failure of the defendant to stop after the offence, which is factor (n). We therefore take a starting point of 7 years as reflecting the totality of the defendant's culpability in this matter. 14. Turning to mitigation, apart from the speeding convictions, the defendant has a good record and is a person of good character. In terms of remorse, we accept that he was shocked and indeed injured himself in the accident and we therefore agree that he does feel remorse, albeit that it did not manifest itself immediately. We have been impressed by the defendant's personal letter, which he has written to us, and he has acknowledged that he is going to have to live for the rest of his life with these events on his conscience. We take into account the defendant's age and his good work record and all of the letters and references that have been passed to us. 15. This case illustrates just how lethal a weapon the car, something so familiar to us all and which we see and travel in everyday, can be. Two lives have been lost and one permanently diminished by this one grossly irresponsible act by the defendant. The Court has no alternative other than to impose a substantial sentence, both as a punishment to him, but also as a deterrent and warning to all others who may be tempted to drive whilst under the influence of alcohol. 16. The sentence of the Court is as follows: on Count 1 you are sentenced to 5 years' imprisonment; on Count 2 you are sentenced to 5 years' imprisonment, concurrent; on Count 3 you are sentenced to 4 months' imprisonment, concurrent; making a total of 5 years' imprisonment. 17. You will be disqualified from driving for 4 years under Counts 1 and 2 and under Article 35 of the Law we disqualify you from holding or obtaining a licence until you have passed your Jersey Driving Test. 18. In terms of deportation we were not satisfied that it is detrimental to the interests of the Island for the defendant to remain here and therefore we are not going to recommend his deportation. Authorities AG v Figueira

[2007] JRC 136 . R v Cooksley [2003] All ER 40. Road Traffic (Jersey) Law 1956. Page Last Updated: 20 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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