

CO-OPERATIVE REPUBLIC OF GUYANA

COUNTY OF DEMERARA

IN THE GEORGETOWN MAGISTERIAL DISTRICT HOLDEN AT THE GEORGETOWN
MAGISTRATE'S COURT HEARD WITHIN THE AFOREMENTIONED DISTRICT.

(CRIMINAL JURISDICTION)

BETWEEN:

PETER MINGO CONSTABLE OF POLICE #24482

-And-

GARY BEST

CASE JACKET NUMBER 2223/2020

RULING ON SUBMISSIONS OF NO CASE TO ANSWER

INTRODUCTION

1. The Defendant, Gary Best was charged with the Offence of Causing Death by Dangerous Driving contrary to Section 35 (1) of the Motor Vehicle and Road Traffic Act Chapter 51:02.
2. The Particulars of the Offence alleged that the Defendant on Saturday 8th February, 2020 on Clive Lloyd Drive Georgetown, a road in the Georgetown Magisterial District, County of Demerara, in the State of Guyana drove motor jeep Registration Number PRR 8182 in a manner dangerous to the public, thereby causing the death of Jude Bentley.
3. This trial which commenced on the 6th October, 2020 contained the testimonies of eight (8) witnesses; namely:

- Jude Nathaniel Bentley
- Johnathan Sawh
- Marc Sonaram
- Police Constable # 23734 Travis Peniston
- Assistant Superintendent of Police Morris Fraser
- Police Constable # 22295 Clavis Duke
- Police Constable # 24482 Peter Mingo
- Detective Inspector of Police Junior Blair

SUBMISSIONS OF A NO CASE TO ANSWER

4. At the close of the Prosecution's case, Counsel for the Defendant Mr. Nigel Hughes in Association with Mr. Donald Daniels and Ms. Sophia Finlay made written Submissions of a No Case to Answer. Counsel for the Defendant contended that the Prosecution had failed to make out a Prima Facie case against the Defendant for the Offence of Causing Death by Dangerous Driving. Counsel for the Defendant also contended that there is no case for the Defendant to answer.
5. Woman Superintendent of Police S. Daniels for the Prosecution, in reply to Defence's Submissions of No Case to Answer, submitted that the Prosecution has discharged its evidential burden in adducing sufficient evidence to establish a Prima Facie Case against the defendant for the Offence of Causing Death by Dangerous Driving.
6. This Court at this stage must determine whether the Prosecution has crossed the threshold of sufficiency and has made out a Prima Facie case against the Defendant for the Offence of Causing Death by Dangerous Driving.

THE LAW GOVERNING SUBMISSIONS OF NO CASE TO ANSWER

7. The Principles governing a Submission of No Case to Answer ought to be considered. The relevant principles have been enunciated in several Guyanese cases as well as in others emanating from Courts in other Commonwealth Jurisdictions.
8. A starting point will be the case of **R v. Hookumchand and Sagar (1897) LRBG 12** where **Sir Edward O'Malley Chief Justice** observed at page 16:
"The test in such a case is whether there is reasonable evidence on which reasonable men could reasonably or fairly find a verdict."
9. Also in the case of the **State v. Lloyd Harris (1974) 22 WIR 41**; the Court of Appeal approved the test laid down in Hookumchand's case in which Justice of Appeal Massiah said at page 62:
"If there is not enough evidence upon which reasonable men could act it must be immaterial whether the case is left to the Jury or not since their verdict could only be in the negative."
10. It has not been doubted that the grounds upon which a No Case Submission may be properly made and upheld are still those contained in the **English Practice Note [1962] 1 A.E.R 448**:
"A submission of No case may be upheld:
 - a. *When there has been no evidence to prove an essential element of the alleged offence; or*

b. *When the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict.*”

11. This Court also considers the case of the **R v. Galbraith [1981] 2 A.E.R 1060** which is the leading authority on the test that a trial judge should apply in determining whether there is a case to answer. Lord Lane CJ states at page 1062:

“How then should the Judge approach a submission of ‘no case’? 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. 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. Where the Judge comes to the conclusion that the Crown’s evidence taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made to stop the case. Where, however, the Crown’s 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 on 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.”

12. From the abovementioned case law, if there is no evidence to establish an essential element of the alleged offence for which the defendant Gary Best is charged for then a submission of no case to answer ought to be upheld.

13. Further, if the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict, then a submission of no case to answer ought to be upheld.

ELEMENTS OF THE OFFENCE

14. This court must consider the elements of offence of Causing Death by Dangerous Driving so as to determine whether the Prosecution has adduced evidence to prove all the elements of the alleged offence.

15. The Prosecution was required to establish that:

- a. The Defendant on the 8th February, 2020, on Clive Lloyd Drive, was the driver of motor jeep # PRR 8182;
- b. The Defendant drove in a manner dangerous to the public; and
- c. As a result of the Defendant’s dangerous driving, he caused the death of Jude Bentley.

WITNESSES' TESTIMONIES AND EXHIBITS

16. As stated in the introduction, the Prosecution called eight (8) witnesses to establish the elements of the Offense of Causing Death by Dangerous Driving. These witnesses can be classified into Civilian Witnesses and Stage Setters. This Court will now summarize and highlight important pieces of the Testimony of the witnesses.

A. CIVILIAN WITNESSES

17. The Prosecution called three civilian witnesses who testified as to a sequence of events which this Court has outlined in a chronological order.

DATE: 7th February, 2020

18. The Witness **Marc Sonaram** testified that he knows Jude Bentley Junior for several years, they were very good friends. On the 7th February, 2020 this witness saw Jude Bentley Junior at the Bike Shop on Robb Street Georgetown. According to Mr. Sonaram when he saw Jude, Jude was showing everyone his (Jude) brand new racing bike, and his (Jude) new pair of red riding shoes that he (Jude) had just bought.

DATE: 8th February, 2020

19. The witness Marc Sonaram testified that on Saturday 8th February, 2020 at about 05:00 hrs he was leaving his Tucville Georgetown residence to go and ride on the East Coast. He then received a phone call from a friend who informed him of an accident by the Russian Embassy. As a result of the phone call, this witness left home and went straight to the Russian Embassy to see what happened.

20. On arrival on the Rupert Craig Highway, this witness rode up where he saw a black jeep and after the black jeep he saw a body covered with a white sheet. According to Mr. Sonaram he observed that the body was clad in a red shoes and he knew that that was the shoes that Jude had just bought. It was the same shoes that Jude had shown him the day before.

21. According to Mr. Sonaram the body was on the right hand side of the road heading East. The body was more to the corner of the right hand side of the road. This witness was then able to see the whole of Jude's body after someone had pulled the sheet. The hearse then came and removed the body.

22. This witness was shown the Photographs Exhibits C 4 and C 6 where he identified Jude Bentley Junior in the red shoes lying on Clive Lloyd Drive on the Southern Drive Lane. This witness further testified that that was the location he saw Jude Bentley Junior's body on the 8th February, 2020.

23. The witness **Johnathan Sawh** testified that he is employed at Lyken Funeral home as a driver and porter. On Saturday 8th February, 2020 at about 06:30 hrs a call was made to Lyken Funeral Home requesting them to pick up a body at Clive Lloyd Drive. As a result this witness along

with a porter left Lyken Funeral home with a hearse Registration No. PRR 2258. They went to Clive Lloyd Drive in the vicinity of the Russian Embassy.

24. According to this witness when he arrived at the location he observed a male lying down motionless on the Southern side of the road covered in a white sheet. He then went to the body picked up the sheet from the body where he observed that the male was mixed race. The body was then lifted and placed gently onto the stretcher. The body was then covered and placed in the hearse. The body was then taken back to Lyken Funeral Home for storage and name tag. The body was tagged with the name 'Jude Bentley'.

25. According to Mr. Sawh, from the time the body was picked up and taken to Lyken Funeral home, the hearse was not involved in any accident neither did the body receive any further injuries. The body was then uplifted from storage the next morning in the same way that it was wrapped, and taken to Georgetown Public Hospital Mortuary for the Post Mortem to be done.

DATE: 10th February, 2020

26. The witnesses **Jude Bentley Senior** and Marc Sonaram were both present at the Georgetown Public Hospital Mortuary on the 10th February, 2020 where they identified the body of Jude Bentley Junior to the Police Constable # 24482 Peter Mingo and the Doctor. The Doctor then did the autopsy on the body. The body was then moved to Sandy's Funeral Home.

DATE: 16th February, 2020

27. According to Marc Sonaram, Jude Bentley Junior was cremated at the Memorial Gardens Le Repentir

B. STAGE SETTERS

28. The Prosecution called several police officers who this Court refer to as the stage setters. These witnesses testified as to their involvement in setting the stage for the investigations into this matter.

29. The witness **Peter Mingo Police Constable # 24482** who is the main investigator testified that on Saturday 8th February, 2020 at 04:30 he was at Kitty Police Station when he received a report of an accident which occurred on Clive Lloyd Drive. Mr. Mingo immediately left for the said accident scene.

30. On arrival at the Russian Embassy, this witness testified that he observed the following:

- Motor jeep PRR 8182 stationary in the Southern drive lane of the said road facing East with damages to the front and right side.
- A body laying West ward which appeared to be motionless on the Southern drive lane of the said road.

- The body was clad in black tights; black, red and yellow short sleeve shirt; and a pair of black gloves. The body also had on a black and gray helmet and a pair of red boots.
- The body was lying in a North to South direction on its back with its head facing South.
- A red substance which appeared to be blood was on the Southern side of the said road, on the face of the body and next to the body.
- A broken purple pedal cycle further West on the Southern side of the road.
- A lamp pole laying on the Southern parapet in a South Eastern direction.
- Debris scattered on the road on both drive lanes.
- A red substance which appears to be blood on the left rear wheel of the motor jeep PRR 8182.

31. Mr. Mingo further testified that the Ambulance PYY 3395 arrived on the scene and the body of the pedal cyclist was pronounced dead by Dr. Rickett. Mr. Mingo then made enquiries for the driver of the motor jeep PRR 8182 and one male negro wearing a black pants and a black T-shirt came forward. The said male identified himself as Gary Best who this witness identified in Court as the Defendant in this matter. The said driver produced his driver's license and other relevant documents for the vehicle which were all found to be in force.

32. This witness testified that he then asked the driver Mr. Gary Best to explain how the accident occurred and the driver stated that:

“He was proceeding East on the Southern drive lane along Clive Lloyd drive at a slow rate of speed and suddenly a pedal cyclist appeared in front of him. I cannot say whether the pedal cyclist was proceeding in front of me or it came out by the empty lot by the Russian Embassy. But on seeing such I applied for brakes and wserved further South as to avoid the collision but despite doing so, the right side front of my vehicle collided with the pedal cyclist where he fell on to the roadway. My vehicle collided into a lamp pole and then stopped. Then I existed my vehicle and stand alongside it to wait on the police to arrive at the scene”.

33. Mr. Gary Best was then asked to show a point of impact which he did. Measurements were then taken by Mr. Mingo and he recorded same in Mr. Gary Best presence on pages 12 and 16 of the Accident Report Booklet.

34. Mr. Mingo then escorted Mr. Gary Best and the motor jeep PRR 8182 to the Kitty Police Station where his vehicle was lodged to be examined by the licensing and certifying officer. Mr. Best was then escorted to the Traffic Headquarters Eve Leary where a Breathalyzer test was conducted in the presence of this witness by Constable Peniston.

35. This witness also prepared a Notice of Intended Prosecution in duplicate and the original was served on the Defendant Gary Best.
36. According to Mr. Mingo he was present at the Georgetown Hospital Mortuary on the 10th February, 2020 when Dr. Nehaul Singh performed a Post Mortem Examination on the body of the deceased Jude Bentley. A Post Mortem Report was subsequently prepared.
37. The witness **Clavis Duke Police Constable # 22295** testified that on the 8th February, 2020 at about 04:50 hrs; he received a request from Constable Mingo for a Police Photographer to visit the Accident scene at Clive Lloyd Drive in the vicinity of the Russian Embassy. As a result of the request made, this witness equipped himself with a digital camera with an empty SD card and proceeded to the said location.
38. On arrival this witness met and spoke with Constable Mingo and Mr. Gary Best. As a result of information received from Constable Mingo this witness took photographic exposures which he subsequently printed into forty five (45) photographs.
39. The witness **Assistant Superintendent of Police Morris Fraser** testified that on the 8th February, 2020 he visited the accident scene on Clive Lloyd Drive where he observed:
- A redish substance on the Southern side of the road; and
 - Debris scattered on both the Northern and Southern side of the road.
40. This witness also testified that at the Kitty Police Station he examined motor jeep PRR 8182 in the presence of the driver Gary Best. The findings upon examination were recorded on a Vehicle Inspection Defect Sheet. The original Vehicle Inspection Sheet was served on Mr. Gary Best and the duplicate was kept for Police records.
41. This witness also examined the Pedal Cycle at the Kitty Police Station in the presence of a relative of the deceased. The findings of this witness upon examination were recorded on a Vehicle Inspection Defect Sheet.
42. The witness **Travis Peniston Police Constable #23734** testified that on the 8th February, 2020 at about 06:45hrs he was present at Traffic Headquarters Eve Leary in the Enquiries office when Constable Mingo came and reported to him that a male whose name he later learnt to be Mr. Gary Best was involved in an accident. Mr. Mingo further requested that Mr. Peniston conduct a Breathalyzer test on Mr. Gary Best.
43. Constable Peniston then outlined the following procedure that he adopted while conducting the Breathalyzer test on Mr. Gary Best:
- He equipped himself with a Breathalyzer machine.

- He took out a sealed straw and gave it to Mr. Gary Best. Mr. Gary Best then checked and it was sealed.
- Mr. Gary Best then opened the said sealed straw.
- Mr. Peniston then took the straw from Mr. Gary Best and placed it on the machine.
- Mr. Gary Best then blew for five continuous seconds and the machine gave a print out.
- According to Mr. Peniston, Mr. Best was invited to blow for two times.
- After the machine gave a print out, Mr. Peniston then took the slip for the reading that he obtained. Mr. Gary Best then signed his name and Mr. Peniston signed his name and handed the slip over to Constable Mingo.

44. The witness **Detective Inspector of Police Junior Blair** testified that on the 11th February, 2020 he went to the Safe City Control Centre located at Liliendaal East Coast Demerara in the said compound of Arthur Chung Convention Centre.

45. On arrival this witness was granted permission to access the system. This witness checked the date and the time on the system to ensure that it was recording in accordance with the current date and time and it was. The system had three hundred and thirty three (333) cameras attached and they were working at the time.

46. This witness testified further that he proceeded to check for an incident that would have occurred on the 8th February, 2020 and observed that it was caught partly on the 8th February, 2020 between 04:41 hrs and 04:45 hrs on cameras with the names 086 Vlissengen Road South, 086 Roundabout East and 086 Lamaha North.

47. This witness testified that he then inserted a blank thumb drive and using the video management software system, he extracted the video files from the said cameras. On completion this witness made a physical comparison of the videos on the system against those on the thumb drive so as to ensure that they were true and accurate and they were.

48. This witness then returned to his office where he made an exact copy of the video files on the thumb drive unto a blank disc. According to this witness he again did a physical comparison of the videos on the thumb drive against those on the disc so as to ensure that they were true and correct and they were. The said disc was them marked JB 2020-02-08.

49. On the 2nd April, 2020 this witness using AVID conducted an Analysis of the video files on the disc marked JB 2020-02-08. Thereafter, a Microsoft Power Point Presentation was prepared by this witness highlighting areas of interest on the video files. The Power Point presentation was placed unto a blank disc marked JB 17 2020.

C. EXHIBITS

50. The following pieces of evidence were tendered as exhibits:

- The Breathalyzer test slip TAM Exhibit A
- The Vehicle Inspection Defect Sheet for the Motor Jeep PRR 8182 TAM Exhibit B 1
- Vehicle Inspection Defect Sheet for the Pedal Cycle TAM Exhibit B 2
- Photographs TAM Exhibit C 1-45
- Post Mortem Report TAM Exhibit D 1-2
- Notice of Intended Prosecution TAM Exhibit E
- Accident Report Booklet TAM Exhibit F 1-24
- Disc marked JB 2020-02-08 Tam Exhibit G 1
- Disc marked JB 17 2020 TAM Exhibit G 2

APPLICABLE LAW

51. In reviewing the facts and the appropriate legislation, this Court considered the following provisions of the **Motor Vehicle and Road Traffic Act Chapter 51:02 as Amended by The Motor Vehicle and Road Traffic Act No. 10 of 2008**.

- **Section 35 (1)** provides that:

“Any person who causes the death of another person by driving of a motor vehicle on the road recklessly; or at a speed or in a manner which is dangerous to the public having regard to the use of the road and the amount of traffic which is actually at the time or might reasonably be expected to be on the road shall be guilty of misdemeanor and on conviction thereof on indictment shall be liable to imprisonment for five years” .

- **Section 46 (1)** provides that:

“Every person in any road who drives or propels any vehicle or is in charge of any animal when meeting or being over taken by any other vehicle or animal as aforesaid shall keep his own vehicle or animal on the left or near side and when overtaking another vehicle or animal going in the same direction shall keep his own vehicle or animal on the right or off side except in case of necessity or other sufficient reason for deviation” .

- **Section 39 C (3)** provides that:

- a. *“a person shall provide two separate specimens of breath for analysis”* , and
- b. *“there must be an interval of not less than two minutes and not more than ten minutes between the provision of specimens”* .

- **Section 39 C (7)** provides that:

“As soon as practicable after a person has submitted to a breath analysis, the member of the Police Force operating the breath analysing instrument shall deliver to that person a statement in writing signed by that member specifying-----

- a. The concentration of alcohol determined by the analysis to be present in that person’s breath and expressed in microgrammes of alcohol in 100 millilitres of breath; and*
- b. The time of day and the day on which the breath analysis was completed” .*

- **Section C (9) (c)** provides that:

“The apparatus used by him to make the breath analysis must be a breath analysing instrument approved by the Minister” .

APPLICABLE CASE LAW

52. The Defendant is charged with the offence of Causing Death by Dangerous Driving. In accordance with Section 35 (1) of the Motor Vehicle and Road Traffic Act Chapter 51:02 the Prosecution must establish that the Defendant drove in a manner dangerous to the public. This Court is required to consider all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road.

DANGEROUS DRIVING

53. This Court will now examine the element of Dangerous Driving; that is whether the Prosecution has established that the defendant’s driving was dangerous to the public.

54. In determining the element of Dangerous Driving this Court first considered the case of **R v. Evans [1962] 3 All ER 1086** in which the trial Judge directed the Jury as follows:

“ ...in law it is now well settled that if the driving is in fact dangerous and that dangerous driving was caused by some carelessness, that is DANGEROUS DRIVING” .

55. The Court further stated:

“If a man adopts a manner of driving which the jury thinks was dangerous to the other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, and momentarily inattentive or even doing his incompetent best.”

56. The case of **R v. Evans [1962]** has clearly established that a person has to adopt a manner of Driving that is Dangerous to the other road users. Therefore, it is the manner of driving that this Court has to consider. The Prosecution was required to establish sufficient evidence that Gary Best adopted a manner of driving that was dangerous to other road users.

57. More so, in **R v. Evans [1962]** the trial Judge continued at page 1087:

“Members of the Jury there is no legal definition of driving to the danger of the Public and there cannot be any legal definition. It has sometimes been said that a very good test is for the Jury to make up their minds on the evidence what actually happened, and in their minds’ eye to put themselves down at the scene of the accident and to ask themselves this question, ‘had we seen this should we have said without any doubt it was a dangerous piece of driving?’ If the answer is ‘yes’ then the man is guilty, and if the answer to the question is ‘oh no’ or ‘we cannot be sure about it’ then he is not guilty”.

58. The trial judge in **R v. Evans [1962]** also posited that:

“You see members of the Jury you are the public, and it is for you to set the standards. You no doubt all of you, use the roads and no doubt a good many of you drive motor cars and you have got to make up your minds here whether or not what [the appellant] did was dangerous to the other road users. If it was then even though the dangerous driving was caused by slight negligence, the slightest negligence on his part, he is guilty of the offence of driving to the danger of the public”.

59. In adopting the **R v. Evans [1962]** formula, this tribunal of both fact and law must first determine whether the prosecution has led sufficient evidence to establish ‘what actually happened’ on the 8th February, 2020 on Clive Lloyd Drive. Secondly, having settled in its mind as to what happened, this tribunal must then determine whether the manner of the Defendant’s driving was dangerous to the public.

60. It is important to note that from **R v. Evans [1962]** one must be settled in their mind as to whether what the defendant did was dangerous to the public; that is dangerous to the other road users.

61. This Court also considers the case of **Flavius v. R (1992) 41 WIR** in which Byron JA stated at page 120 that:

“Dangerous Driving required proof only that the manner of driving was dangerous to the public for as long as the driver was conscious of the possible consequences of his driving”.

62. It is, therefore, the manner of driving exhibited by the Defendant that the Prosecution must establish was dangerous to the public.

63. **Archbold Criminal Pleading, Evidence and Practice 1999 at Chapter 32 Paragraph 17** considered the meaning of Dangerous Driving canvassed in **Section 2A of the Road Traffic Act 1988. Section 2A (1)** provides that a person is regarded as driving dangerously if:

- a. *The way he drives falls far below what should be expected of a competent ad careful driver; and*
- b. *It would be obvious to a competent and careful driver that driving in that way would be dangerous.*

64. **Wilkinson’s Road Traffic Offences 28th Edition at Chapter 5 paragraph 14, Under the heading ‘What is Dangerous Driving’,** Section 2A (1) was also examined which this Court accepts as persuasive authority, the following excerpt:

“The determination of what amounts to driving dangerously is thus by means of a test which concentrates upon the nature of the driving rather than the defendant’s state of mind. The first limb of the test (Section 2A (1) (a)) requires the driving to fall below what would be expected of a competent and careful driver and the second limb (Section 2A (1) (b)) requires the dangerousness of such driving to be obvious to a competent careful driver”.

65. This Court must consider whether the Prosecution has established the nature of the Defendant’s driving and that such driving was dangerous to the public.

66. **Wilkinson’s Road Traffic Offences 28th Edition at Chapter 5** also continued at the same **paragraph 14** that:

“...so far as the standard of driving is concerned, the test to be applied is clearly objective in nature, albeit that it employs the sense or senses of a familiar fictional character the ‘competent and careful driver’ ”.

67. This Court also considered Cases emanating from the Supreme Court of Canada which it accepts as persuasive authority. Similar to Section 35 (1) of the Motor Vehicle and Road Traffic Act Chapter 51:02 is **Section 249 (1) (a) of the Criminal Code of British Columbia** which provides:

“Everyone commits an offence who operates a motor vehicle in a manner dangerous to the public having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that is at that time or might reasonably be expected to be at that place”.

68. In examining **Section 249 (1) (a) of the Criminal Code of British Columbia**, Madam Justice Charron in the case of **R v. Beatty [2008] S.C.J No. 5 (Supreme Court of Canada S.C.C) at paragraph 36** articulated and clarified the **OBJECTIVE TEST** which was laid down by Justice Cory in **R. Hundal (1993) 1 S.C.R.**:

“For that reason, the objective test as modified to suit the criminal setting requires proof of a marked departure from the standard of care that a reasonable person would observe in all the circumstances.”

69. Madam Justice Charron continued at **paragraph 49 of Beatty** that:

“If the conduct does not constitute a marked departure from the standard expected of a reasonable prudent driver there is no need to pursue the analysis. The offence will not have been made out...”

70. In applying the principles laid down in the abovementioned case law, this Court must first be clear as to *what was the defendant's manner or nature of driving*. In other words the Court must be clear as to *'what actually happened on the 8th February, 2020'*?

71. This Court, after making such a determination as to whether the prosecution has established what was the defendant's manner of driving, the Court must then go on to determine whether *that manner of driving or nature of driving 'fell below what should be expected of a competent and careful driver'*.

72. As the cases of the Supreme Court of Canada suggest, the Court must determine *whether the Defendant's nature of driving was a marked departure from the standard expected of a reasonable prudent driver*.

73. This Court pauses to note that the onus never shifts to the Defendant. The Prosecution is required as a matter of law to prove all of the requisite material elements of the offence beyond reasonable doubt. This was also expressly stated at **paragraph 15** in the case of **R v. Gurjit Singh Dhillon 2012 BC PC 504 (British Columbia Provincial Court)**.

ANALYSIS OF EVIDENCE

74. In order to prove all of the requisite element of Dangerous Driving, the Prosecution in this case have relied on certain pieces of evidence which the Court will now analyze.

THE BREATHALYZER TEST SLIP

75. The Prosecution's case is that on the 8th February, 2020 at about 05:00 hrs Constable Travis Peniston conducted a Breathalyzer test on Gary Best in the presence of Police Constable Mingo.

76. The test slip which was Tendered Exhibit A, this Court observed had two readings on it which carried the same date of the **8th February, 2020**; the same time of **05:04 hrs** and the same test number **0809** as well as the same percentage of breath alcohol content (BAC) of **.085**. This Court also observed that the slip had recorded on it the last calibration was **20th February, 2019 at 15:19 hrs**.

77. The Prosecution from the evidence of this Test Slip and the testimony of Constable Peniston wants this Court to place evidential weight on the Breathalyzer test slip and to draw the inference that the Defendant consumed alcohol on the 8th February, 2020.

78. However, **Wilkinson's Road Traffic Offences 28th Edition at Chapter 5 paragraph 87** clearly states that:

"Mere consumption in itself is insufficient. The Jury would have had to be satisfied that the appellant had consumed such a quantity of alcohol as might adversely affect a driver."

79. Therefore, when considering this type of evidence it is essential to note that the prosecution must go a step further than just establishing mere consumption. The Prosecution must establish that the amount of drink taken was such as adversely to affect the Defendant or that he was in fact adversely affected: **R v. Mc Bride [1992] 2 QB 167.**
80. The Court also has an overriding discretion to exclude such evidence where its prejudicial effect outweighs its probative value: **R v. Mc Bride [1992] 2 QB 167.**
81. In determining whether to accept or exclude this evidence or what weight if any to attach to it, this Court must be guided by the elements that the Prosecution is required to prove as laid down in **Section 39 C of the Motor Vehicle and Road Traffic Act Chapter 51:02 as Amended by The Motor Vehicle and Road Traffic Act No. 10 of 2008.**
82. In the Guyanese cases of **Christopher Rajkumar v. The State Appeal No. 7 of 2017 and Gajanand Singh v. The State Appeal No. 8 of 2017 both of the Full Court of the High Court of the Supreme Court of Judicature**, the Honourable Justice Navindra A. Singh analyzed extensively the elements the Prosecution has to prove for this type of evidence to be received. The Judge stated at page 3 that these elements outlined in **Section 39 C Chapter 51:02 MUST** be established beyond a reasonable doubt.
83. From the evidence in this case, Mr. Peniston stated under cross-examination that he conducted two tests. But this witness accepted that the time of 05:04 hrs is shown on both readings on the slip. This witness accepted also that the time of 05:04 hrs shown on both readings indicates that he did two tests at exactly the same time.
84. It is clear that this witness did not comply with **Section 39 C (3) of Chapter 51:02.** This witness was required to obtain two separate specimens of breath analysis from the Defendant. This witness was also required to obtain these two separate specimens of breath analysis between a time interval of not less than two (2) minutes and not more than ten (10) minutes.
85. In other words, Mr. Peniston was required to take the first specimen of breath analysis from the Defendant then wait for a time interval of not less than two minutes and not more than ten minutes to elapse, then take the second specimen of breath analysis from the Defendant.
86. The fact that both readings on the slip have the same time as 05:04 hrs and the same test number of 0809 clearly establishes that there was no time interval when taking the two specimens of breath analysis from the Defendant. More so, the witness stated that Defendant blew for five continuous seconds and he invited the Defendant to blow two times. However, this witness clearly did not testify as to there being a time interval between the Defendant being invited to blow twice.

87. This Court clearly observed that the witness did not follow the procedure in obtaining two separate specimens of breath analysis from the Defendant.
88. Mr. Peniston when confronted under Cross-examination even accepted that it was impossible to have two tests done at exactly the same time. This Court certainly finds that Mr. Peniston did not comply with Section **39 C (3) of Chapter 51:02**.
89. This Court also observed that Mr. Peniston did not comply with Section **39 C (7) of Chapter 51:02**. There was no evidence from Mr. Peniston that as soon as practicable after the Defendant submitted to a breath analysis, that he (Mr. Peniston) delivered to the Defendant a statement in writing signed by him (Mr. Peniston) specifying----
- a. “The concentration of alcohol determined by the analysis to be present in the Defendant’s breath and expressed in microgrammes of alcohol in 100 millilitres of breath; and
 - b. The time of day and the day on which the breath analysis was completed” .
90. **LJ Watkins in Regina v. Kingston Upon Thames Justices, Ex Parte Khanna [1986] Queen’s Bench Division** stated at page 366 that:
- “...the officer conducting the test is under a statutory obligation when the test is concluded and the printout is issued to provide the motorist with a copy of it. That is so that he can take it away, study the contents of it and take advice upon it” .
91. **Section 39 A of the Motor Vehicle and Road Traffic Act Chapter 51:02 as Amended by The Motor Vehicle and Road Traffic Act No. 10 of 2008** requires that there **MUST** be strict compliance of the procedures as set out when conducting a Breathalyzer test.
92. The evidence of Mr. Peniston discloses that there was clear non-compliance of the statutory procedures.
93. This Court also must be satisfied from evidence that machine that Mr. Peniston used to conduct the Breathalyzer test was operating properly. **Regina v. Kingston Upon Thames Justices, Ex Parte Khanna [1986] LJ Watkins again** stated at page 366 that:
- “It is essential, however to explain that the results provided by the device cannot be regarded as sufficiently reliable to make them admissible as evidence in a Court unless the device at the material time operated efficiently...”
94. In the abovementioned case the issue as to whether the Lion Intoximeter 3000 was working properly was a live issue. In that case an application was made for an Order of Certiorari to quash the conviction of the Applicant. The Applicant was taken to the Kingston Police Station and was asked to submit to a breath test on the Lion Intoximeter 3000 and he complied with the request. The Applicant provided two samples and the results revealed that the amount of alcohol on the applicant’s breath was no less than 81 micrograms in 100 millilitres, over twice

what is called the legal limit. The calibration checks went beyond the limits of tolerance. In fact, the machine registered 38 microgrammes.

95. **LJ Watkins** stated at page 366 that:

“the device had in built a self-checking system. When used as it must be, before and after each specimen of breath is analysed, it should register if normal 35 microgrammes of alcohol in 100 millilitres of breath. A tolerance either side of this figure is permissible. It is limited to between 32 and 37.9 microgrammes inclusive. A reading outside those figures by what is called a calibration check renders the device unreliable and the result of the analysis of a specimen of breath no matter what it be, inadmissible as evidence to establish the commission of the offence charged”.

96. In the said case the device was thereby rendered inefficient since the calibration checks went beyond the limit of between 32 and 37.9 microgrammes. The product of the device was therefore, inadmissible for the purpose of providing evidence against the applicant. The guilty plea of the applicant was vitiated and the conviction quashed on the basis that the calibration figures revealed that the device was inefficient.

97. In this present case, the CMI Intoxilyzer 400 which was used by Mr. Peniston always produces a print out that displays the date of the last calibration. Exhibit A clearly shows the date of last calibration is the 20th February, 2019 at 15:19h hrs. The device used by Mr. Peniston was not calibrated in about one year prior to conducting the Breathalyzer test on Mr. Gary Best.

98. **Section 39 C (9) (c) of Chapter 51:02** stipulates that the apparatus used by Mr. Peniston must be one that was approved by the Minister. Mr. Peniston stated that the apparatus is required to be calibrated every six months. It is clear that this machine was not calibrated within six months prior to taking the specimen of breath analysis from the defendant. Certainly the question as to the reliability of results of this particular CMI Intoxilyzer 400 must be considered.

99. In the case of **People v. Hargobind 2012 NY Slip Op 50450 (U) 34 Misc 3d 1237 (A) Criminal Court of the City of New York, Kings County** which this Court accepts as persuasive authority, Gerstein J stated that:

“Thus to establish the reliability of the results of the particular intoximeter administered to the defendant the people will have to show at least the following:

- a. That the device had been tested producing a reference standard within a reasonable period prior to the defendant’s test;
- b. That the device had been properly calibrated;
- c. That the device was properly functioning on the day the test was administered properly; including that the device was purged prior to the test by a properly qualified administrator; and

d. That the defendant was observed for at least 15 minutes prior to the test to ensure that the defendant had not ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten or smoked or have anything in his/her mouth”.

100. This Court observed that there was no evidence that the witness Mr. Peniston did a test on the device to produce a reference standard within a reasonable time period prior to the Defendant’s test. The practice has usually been for the police officer conducting the test to first provide his own specimen of breath analysis in front of the Defendant so as to show the Defendant that machine is working properly. However, this was not done in this case.

101. There was no evidence that the machine was properly calibrated. Mr. Peniston even testified that the results are considered unreliable if the machine is not calibrated every six months. The only evidence given by this witness as to whether the machine was working was that he saw the ready light on. Despite this observation made by this witness the question as to the reliability of the results is of grave importance given the fact that the machine was not calibrated within the statutory time frame.

102. Although breath alcohol detection machines have long been considered scientifically reliable, the prosecution was required to establish an adequate evidentiary foundation for the admission into evidence the results of the test: **People v. Bosie 2010 NY Slip Op 08380 {15 NY 3d 494} J Graffeo of Court of Appeals.**

103. This Court in applying the above mentioned principles finds that Constable Peniston did not comply with the statutory procedures outlined in Section 39 C of Chapter 51:02 when obtaining specimens of breath analysis from the Defendant.

104. This Court also finds that given the fact that the device used by Mr. Peniston on the 8th February, 2020 was last calibrated more than six months prior to conducting the test on the Defendant, the Prosecution has certainly failed to establish that the said device was working efficiently.

105. This Court therefore is duty bound to place no weight on the Breathalyzer test slip. In fact this Court will go so far as to say that Breathalyzer test slip Exhibit A and the evidence of Mr Peniston are unreliable. The witness’s evidence as to the procedure he adopted in conducting the Breathalyzer test was certainly discredited. This Court will not rely on Exhibit A and rejects the evidence of Mr. Peniston.

VIDEO FOOTAGES, MEASUREMENTS, VEHICLE INSPECTION DEFECT SHEETS, PHOTOGRAPHS AND POST MORTEM REPORT

106. The Prosecution produced three video footages which were captured on cameras **086 Vlissingen Road South; 086 Roundabout East and 090 Lamaha North**. According to the

evidence of Inspector of Police Junior Blair the said cameras partially recorded an incident which occurred on 8th February, 2020 between 04:41 hrs and 04:45 hrs. In analysing the three video footages reference will be made of the other exhibits that the Prosecution is also relying on.

A. 086 VLISSENGEN ROAD SOUTH

In this video footage this Court observed the following:

- I. The video has a date of 8th February, 2020 and a start time of 04:41 hrs.
- II. Between 04:42:14 hrs to 04:42:18 hrs a person is seen riding a bicycle. The person enters onto a roundabout dressed in a black tights; black, red and yellow short sleeve shirt; a black helmet and a red shoes.
- III. Between 04:43:22 hrs to 04:43:24 hrs a dark coloured motor vehicle is seen proceeding onto the roundabout followed by a white minibus and a gray motor car.

B. 086 ROUNDABOUT EAST

In this video footage this Court observed the following:

- I. The video has the date 8th February, 2020 and a start time of 04:41:58 hrs.
- II. At 04:42:27 hrs a person is seen riding a bicycle existing the roundabout proceeding East and entering unto the left lane or Northern carriageway of Clive Lloyd Drive.
- III. The said person is seen wearing a black tights; black short sleeve shirt; a black helmet and a red shoes.
- IV. The bicycle also has a light to the rear.
- V. The person continues riding the bicycle on the left carriageway until at 04:43:03 hrs when the person is out of the camera's view.
- VI. At 04:43:33 hrs a dark coloured motor vehicle approaches existing the roundabout proceeding East and entering unto the left lane or Northern carriageway of Clive Lloyd Drive. This motor vehicle was followed by a white minibus and a gray motor car.
- VII. The said dark coloured motor vehicle continues on the left carriageway until at 04:43:42 hrs when the dark coloured motor vehicle is out of the camera's view.

C. LAMAHA STREET NORTH

In this video footage this Court observed the following:

- I. At 04:43:54 hrs there is an object moving which appears to be someone riding behind the Russian Embassy. This object is not seen riding after the Russian Embassy fence ends or beyond the end of the Russian Embassy fence.
- II. At 04:43:59 hrs there is a dark coloured object which appears to be a dark coloured motor vehicle driving behind the Russian Embassy.
- III. This footage is impeded by trees and the fence of the Russian Embassy.

**RELEVANCE OF CAMERAS 086 VLISSENGEN ROAD SOUTH AND 086
ROUNDAABOUT EAST**

THE CYCLIST

107. This Court considered the evidence of the witness Marc Sonaram who testified that on the 7th February, 2020 Jude Bentley Junior showed him a new pair of red riding shoes that he had just bought. The Court also considered that the witness Marc Sonaram testified that on the 8th February, 2020 at about 5 am he went to the accident scene which was in the vicinity of the Russian Embassy. This witness testified that he saw Jude Bentley Junior's body on the right hand side wearing the same red shoes.
108. Further, this Court considered the evidence of PC#22482 Peter Mingo who testified that when he arrived on Clive Lloyd Drive in the vicinity of the Russian Embassy, he observed a body lying on the Southern drive lane of the said road. The body was wearing a black tights; black, red and yellow short sleeve shirt; a pair of black gloves; a black and gray helmet and a pair of red boots. This description of the body was supported by the Photographs Exhibit C 1-6.
109. The evidence before this Court was that this body was later identified to Peter Mingo by Jude Bentley Senior and Marc Sonaram as Jude Bentley Junior on the 10th February, 2020 at the Georgetown Public Hospital Mortuary.
110. The Prosecution did not call any witness to identify the person that was riding the bicycle as seen in the video footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East. More so, the Video Analyst Mr. Junior Blair did not do any comparison in his power point presentation in relation to the cyclist just as he did with respect to the dark coloured motor vehicle.
111. This Court, nevertheless observed the similarities between the clothing that the body of Jude Bentley was seen wearing as he was laying on Clive Lloyd Drive and that of the clothing of the person who was seen riding the bicycle in the video footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East. Furthermore, the Court observed the distinct pair of *RED* shoes on that of the person seen riding the bicycle in the video footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East. This Court draws the inference that those were the same *RED* shoes that the witnesses testified that Jude Bentley had on when they saw him lying on the Southern drive lane of Clive Lloyd Drive.
112. The Video Footage captured on camera 086 Roundabout East shows that the person riding the bicycle was riding East on Clive Lloyd Drive. The body of Jude Bentley and a bicycle was later seen laying on the same Clive Lloyd Drive.

113. This Court draws the inference that the cyclist in the video footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East is JUDE BENTLEY, the deceased.

THE DARK COLOURED MOTOR VEHICLE

114. This Court considered the evidence of Mr. Mingo as to the motor vehicle PRR 8182 which this witness observed on the Southern drive lane facing East on Clive Lloyd Drive on the 8th February, 2020. This said vehicle was photographed and this Court considered the appearance of the vehicle and its key features as seen in Exhibits C 13 to C 22.

115. This Court also considered the evidence of the Video Analyst Mr. Junior Blair who made a comparison of the Motor Vehicle PRR 8182 seen in the Photographs and the dark coloured vehicle seen in Video Footage captured on camera 086 Vlissengen Road South. This witness identified key similar distinguishing features between motor vehicle PRR 8182 and the dark coloured vehicle seen in Video Footage captured on camera 086 Vlissengen Road South.

116. This Court finds that there is sufficient evidence in which the inference is drawn that the Motor Vehicle seen in Video Footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East is the same vehicle PRR 8182 seen in Exhibits C 13 to C 22. There are similar distinguishing features between the two vehicles which this Court infers that they are one and the same.

117. This vehicle PRR 8182 is the same vehicle that the defendant Gary Best identified to Mr. Mingo as the vehicle that he was driving on the 8th February, 2020.

118. This Court finds that both the Video Footages captured on cameras 086 Vlissengen Road South and 086 Roundabout East are relevant as they clearly show that:

- At **04:42:14 hrs** the cyclist Jude Bentley entered unto the roundabout.
- At **04:42:27 hrs** the cyclist rode out of the roundabout unto Clive Lloyd Drive on the Northern carriage way or left drive lane.
- At **04:43:22 hrs** the motor vehicle PRR 8182 driven by Mr. Gary Best entered unto the roundabout.
- At **04:43:33 hrs** the vehicle PRR 8182 driven by Mr. Gary Best proceeded out of the roundabout and entered unto Clive Lloyd Drive on the Northern carriageway or left drive lane.
- Both the cyclist Jude Bentley and the Defendant Gary Best driver of PRR 8182 entered unto Clive Lloyd Drive on the left drive lane.
- The cyclist Jude Bentley had a rear light to his bicycle.

RELEVANCE OF CAMERA LAMAHA STREET NORTH

119. The footage captured on camera Lamaha Street North is the key footage that the Prosecution relies on to establish the element of Dangerous Driving. The view from this camera was impeded by trees and the Russian Embassy fence.
120. The time stated on this footage when an object is seen moving behind the Russian Embassy fence was **04:43:54 hrs**.
121. The time Jude Bentley was last seen riding on the left drive lane of Clive Lloyd Drive in camera 086 Roundabout East was **04:43:03 hrs**.
122. Given the lapse of **51 seconds** between the above mentioned times, this Court therefore, draws the inference that this object of what appears to be someone riding behind the Russian Embassy was Jude Bentley, the deceased.
123. The time stated on this footage when the dark coloured object is seen driving behind the Embassy fence was **04:43:59 hrs**.
124. The time the motor vehicle PRR 8182 driven by Gary Best was last seen on the left drive lane of Clive Lloyd Drive in camera 086 Roundabout East was **04:43:42 hrs**.
125. Given the lapse of **17 seconds** between the above mentioned times, this Court therefore, draws the inference that this object of what appears to be a dark coloured vehicle driving behind the Russian Embassy is Motor Vehicle PRR 8182 driven by Gary Best.
126. It should be noted that in this video footage of Lamaha Street North the cyclist Jude Bentley is not seen riding past the Russian Embassy Fence. Where the fence ends going East on Clive Lloyd Drive can be seen in this footage. Jude Bentley is clearly not seen riding past the end of the Embassy fence going East on Clive Lloyd Drive.
127. This Court makes this observation which is crucial given the fact that the Point of Impact as shown by the Defendant and which is seen in the Photographs Exhibits C 22 to C 28 is a point beyond the end of the Embassy Fence going East on the Southern (right) drive lane of Clive Lloyd Drive.
128. From the video footage of Lamaha Street North it is clear that the collision occurs before the end of the Russian Embassy fence since the cyclist Jude Bentley is not seen riding past the end of the Embassy fence. This means that the Point of Impact as shown by the Defendant is not supported by the video footage of Lamaha Street North.

THE SILENT, TRUSTWORTHY, UNEMOTIONAL, UNBIASED AND ACCURATE WITNESS

129. In the Canadian case of **R v. Nikolovski (1996) 111 CCC (3d) 403 J. Cory** posited that a video tape:

“...may indeed be a silent, trustworthy, unemotional, unbiased and accurate witness who has complete and instant recall of events. It may provide such strong and convincing evidence that of itself it will demonstrate clearly either the innocence or guilt of the accused”.

130. In this present case the ‘*silent, trustworthy, unemotional, unbiased and accurate*’ witnesses are the video footages captured on cameras 086 Vlissengen Road South, 086 Roundabout East and Lamaha Street North. From these footages the Prosecution is asking the Court to draw certain inferences so as to establish that they have made out a Prima Facie case against the Defendant for the Offence of Causing Death by Dangerous Driving.

INFERENCE

131. An inference is a conclusion, that is, the **ONLY** explanation that can be arrived at from a set of facts or evidence. An inference can be likened to the pieces of a puzzle, when assembled together, they form a complete picture.

132. In arriving at an inference, there must be no other rational explanation or conclusion from the evidence.

133. When applying the principles governing the element of Dangerous Driving, this Court must determine ‘*what happened on the 8th February, 2020; that is, how did the accident occurred*’? From the evidence adduced by the prosecution, there must be **ONLY** one explanation as to how the accident occurred on the 8th February, 2020.

134. After determining ‘*how the accident occurred*’, this Court must then examine *the nature or manner of the Defendant’s driving and determine whether there is sufficient evidence that establishes the element that the Defendant’s driving was dangerous to the public.*

135. The Prosecution was required to adduce evidence that establishes the manner or nature of Mr. Gary Best driving and that the nature or manner of his driving was in fact dangerous to other road users. As the authorities suggest the Prosecution was required to establish that Mr. Gary Best fell far below what would be expected of a competent and careful driver. More so, using the cases of the Supreme Court of Canada, the Prosecution was required to establish that Mr. Gary Best departed from the standard expected of a reasonable prudent driver.

EVIDENCE OF PREVIOUS DRIVING

136. Evidence of Dangerous driving a few minutes before but two miles from the scene of the accident was held to be admissible: **Hallett v. Warren (1929) 93 JP 225 and R v. Taylor (1927) 20 Cr App R 71**. The evidence of the earlier acts of driving must have some relevance to the offence charged.
137. From the video footage captured on camera 086 Roundabout East there is no evidence that the manner of driving done by the Defendant Gary Best when he entered onto Clive Lloyd Drive fell below what would be expected of a competent and careful driver.
138. In fact as Mr. Gary Best's vehicle entered onto Clive Lloyd Drive it was followed by a minibus and a motor car. From the video footage camera 086 Roundabout East there is no evidence which suggests that either of the vehicles were driving at a fast rate. From the video footage all three vehicles including the Defendant's vehicle were proceeding moderately.
139. There was also no indication from the video footage captured on camera 086 Roundabout East that the Defendant's manner of driving immediately prior to what is seen in the video footage captured on Lamaha Street North was dangerous to the public.

LEFT OR NEAR SIDE OF ROAD

140. As mentioned before both the Cyclist and the Defendant's vehicle entered onto Clive Lloyd Drive on the Northern carriage way or left drive lane. **Section 46 (1) of Chapter 51:02** provides the Rule of the Road that all vehicles are required to be on the left or near side of the road except when overtaking another vehicle, on the right or off side. Further, the section provides for the exception of necessity or other sufficient reason for deviation which will cause a vehicle not be on the left side or near side of the road.
141. Both the cyclist Jude Bentley and the Defendant's vehicle started their journey on Clive Lloyd Drive on the left side or near side of the road. However, at the end of the journey, the body of cyclist Jude Bentley; the bicycle; the Defendant's vehicle; and the Point of Impact shown by the Defendant were all seen on the Southern or right side of the Clive Lloyd Drive.
142. The crucial question to be determined is what happened between the time Jude Bentley was seen on the left side of Clive Lloyd Drive in the 086 Roundabout East footage to the time he was seen again riding behind the Russian Embassy in the Lamaha Street North footage?
143. As was established earlier **51 seconds** elapsed between the time Jude Bentley was last seen on the left side of Clive Lloyd Drive in the 086 Roundabout East footage to the time he was seen again riding behind the Russian Embassy in the Lamaha Street North footage.

144. There is no eye witness or video footage which gives us an account as to what happened between those 51 seconds. **What was Jude Bentley doing in those 51 seconds?**
145. Issues were raised in the Prosecution's case as to whether the cyclist can ride in both lanes. The witness Mr. Peter Mingo was very evasive under cross-examination when this issue was raised and even contradicted himself.
146. Under cross-examination this witness (Peter Mingo) first stated that the cyclist is required to be on the left side or Northern side of the road. But when this witness was confronted with his evidence of seeing the cyclist laying on the Southern side of the road and whether that was the correct lane for the cyclist to ride in, this witness after refusing to answer eventually stated that the cyclist is allowed to be in both lanes.
147. The testimony of the witness Mr. Peter Mingo conflicts with the testimony of ASP Fraser who stated under cross examination that the Motor Vehicle and Road Traffic Act provides that all vehicles must drive on the left or near side of the road.
148. The Prosecution has not provided any authority whether case law or legislation that permits a cyclist to use both lanes of a public road. In fact this Court has found no law or any case of persuasive authority that states that a cyclist can ride in both lanes.
149. Even if there is such a law or case, there is no evidence to establish which side of the road Jude Bentley was riding on during those 51 seconds prior to collision. Mr. Junior Blair testified that from Lamaha Street North footage he was unable to say which side of the road the cyclist was on while riding behind the Embassy. **There are therefore, 51 seconds unaccounted for pertaining to the cyclist Jude Bentley.**
150. The explanation given by the defendant as to how the accident occurred which will be discussed later, does not disclose which side of the road the cyclist was riding on immediately prior to the collision. The Defendant stated that he was proceeding in the Southern drive lane when the cyclist suddenly appeared in front of him. There is no evidence as to what point the Defendant entered the Southern drive lane. The Motor Vehicle and Road Traffic Act provides for vehicles to be in the Southern drive lane when overtaking another vehicle or if there is sufficient reason for deviation.
151. Nevertheless, whether Jude Bentley was riding in the left lane or right lane or whether the Defendant was driving in the left lane or right lane, the Court still has to examine the Defendant's manner of driving and whether the Prosecution has established that the Defendant's manner of driving was dangerous to the public.

THE CRUCIAL 17 SECONDS

152. As it relates to the motor vehicle PRR 8182 driven by Mr. Gary Best, as established earlier **17 seconds** elapsed between the time this vehicle is seen on Clive Lloyd Drive in the 086 Roundabout East footage to the time it is seen again behind the Russian Embassy in the Lamaha Street North footage.
153. There is no eye witness or video footage of what happens in those **17 seconds**. What happened in these **17 seconds** is the crucial piece of evidence in the Prosecution's case in establishing how the accident occurred and what was the nature and manner of the defendant's driving.
154. The **ONLY** evidence in the Prosecution's case as to what happened in these **17 seconds** is what the Defendant said to Officer Mingo when he was asked to explain how the accident occurred. There is no other evidence in the Prosecution's case that establishes the Defendant's manner or nature of driving other than what the defendant said in his explanation to Officer Mingo.
155. The Defendant stated in his explanation that:
- He was proceeding East on the Southern drive lane along Clive Lloyd Drive;
 - He was proceeding at a slow rate of speed;
 - A pedal cyclist appeared in front of him suddenly;
 - He cannot say whether the cyclist was proceeding in front of him or came out the empty lot by the Russian Embassy;
 - On seeing this he applied for brakes and swerved further South as to avoid the collision;
 - The right side front of his vehicle collided with the pedal cyclist where the cyclist fell on to the roadway; and
 - Then his vehicle collided with a lamp pole then stopped.
156. The Prosecution in its submissions at page 8, paragraph 3 contended that the explanation given by the defendant; together with the Exhibits G 1 (Video footages), F 1 -24 (Accident Report Booklet), D 1-2 (Post Mortem Report), C 1-45 (Photographs) and B1 and B2 (Vehicle Inspection Defect Sheets) establishes the Defendant's dangerous manner of driving.
157. The Prosecution in its submissions at page 8 paragraph 3 requested the Court to consider the explanation given by the Defendant of '*swerving right, colliding into the pedal cyclist*'. However, it must be noted that this is not all that the Defendant said in his explanation to the Police and the Court must consider ALL that the Defendant said.
158. The Prosecution is asking the Court to find from the explanation of the Defendant that he '*swerved right*', constitutes a dangerous maneuver on the part of the defendant which fell short of what is expected of a competent and careful driver.

159. This Court however, observed that from the explanation given by the Defendant, this maneuver was an evasive action done by the Defendant who was faced with a sudden emergency.
160. In the Prosecution's case the Defendant stated that the cyclist appeared suddenly in front of him as he was proceeding East on the Southern drive lane along Clive Lloyd drive.
161. In the Prosecution's case the Defendant stated that to avoid the collision he applied for brakes and swerved further South. In the Prosecution's case the manner of driving of the Defendant came from the explanation given by the Defendant to the police. The Prosecution was required to establish that the Defendant's manner of driving fell short of what is expected of a competent and careful driver.
162. From the explanation of the Defendant, this Court finds that the manner of driving of the Defendant was adopted when he was faced with a sudden emergency as explained by him which does not fall short of what is expected of a competent and careful driver. Any competent and careful driver faced with a sudden emergency would try to take an action to avoid a collision.
163. As pointed out earlier there is no eyewitness or video footage that establishes which side of the road Jude Bentley was riding on during 51 seconds prior to the collision. The Defendant in his explanation stated that Jude Bentley appeared suddenly in front of him. However, from the video footages of cameras 086 Vlissengen Road South and 086 Roundabout East, Jude Bentley had proceeded onto the Clive Lloyd Drive before the Defendant's vehicle. Therefore, Jude Bentley would have been riding on Clive Lloyd Drive ahead of the Defendant's vehicle.
164. The Court considers the photographs Exhibits C13 to C20 and Vehicle Inspection Defect Sheet Exhibit B 1 which shows and records the damages on Motor Vehicle PRR 8182. There are extensive damages to the right side of the Defendant's vehicle. The Defendant stated that he collided with the pedal cyclist on the right side front of his vehicle and then he collided into a lamp pole.
165. From the extensive damages it is difficult for anyone to differentiate which damages were as a result of the vehicle colliding with the pedal cyclist.
166. The Court also observed damages to the middle bunnett and front bumper. The Court also observed one damage to the left side front of the vehicle which is the left side fog lamp pushed backwards.
167. The Court also considers that there were debris seen in both the right and left drive lane of Clive Lloyd drive. There is no evidence to explain why debris would be in both the right and left drive lane.

168. There is no evidence to account for the damage to the left side fog lamp of the defendant's vehicle. There is no other evidence in the Prosecution's case to establish whether the defendant collided with the cyclist on any other side of his vehicle or any other drive lane.

169. The only evidence in the Prosecution's case as to which drive lane the collision occurred is what the Defendant stated in his explanation and that is he was proceeding in the Southern drive lane and also the Point of Impact shown by the Defendant in the Southern drive lane.

170. As pointed out previously, the cyclist Jude Bentley entered onto Clive Lloyd Drive on the left carriage way and was riding on the left or near side of the road. This certainly begs the following questions:

- How did the body of cyclist end up on the Southern carriage way?
- At what point did the cyclist reached unto the Southern carriage way?
- At what point did the cyclist leave the left side or Northern carriageway
- Was the cyclist riding in the middle of the road prior to the collision?
- Was the cyclist riding in the middle of the Southern carriage way or the corner of the Southern Carriage way prior to the collision?
- Did the cyclist suddenly cross over from the left or Northern carriage way to the Southern carriage way into the path of the Defendant's vehicle?

171. From the evidence, this Court must arrive at only one conclusion as to how the accident occurred. In the Prosecution's case there are 17 seconds unaccounted for which would have cleared up many issues as to how the accident occurred.

DRAGGED ALONG THE ROAD WAY

172. As the tribunal of fact and law this Court can only consider the evidence that was presented in Court. This Court cannot speculate and can only draw inferences based on the evidence that was presented.

173. It follows similarly that Judicial Officers should refrain from asking the Court to draw inferences or arrive at a conclusion based on evidence which was certainly not presented in Court. The Prosecution in their submissions at page 9 has asked this Court to find that the Defendant *'drove in a dangerous manner as he swerved right before colliding with pedal cyclist Jude Bentley, before he lost control of motor jeep and purportedly dragged the cyclist along the road way before putting his mangle body down some 114 feet later before his vehicle finally came to a stop some 124 feet, having uprooted a concrete lamp pole on the Southern parapet'*.

174. This Court however, must strongly state that the Prosecution has not presented any evidence that the cyclist Jude Bentley was **'dragged along the road way'** after the collision. The measurements listed in Exhibits F 1-24 indicate that from the Point of Impact shown by

the Defendant to where the cyclist Jude Bentley was seen laying on Clive Lloyd Drive was 114 feet. There is no evidence that the Defendant's vehicle dragged the body of Jude Bentley to that location.

175. In fact the video footage of Lamaha Street North does not show what happened to the cyclist after collision. The camera does not caption what happened after collision. More so, even though the Photograph Exhibit C10 depicts that there were street lights behind the Embassy and Lamaha Street North footage also shows lights on at time, this Court observed that after the collision all that is seen is smoke and the video is not clear as what happened to the cyclist after collision. The Court was only able to draw an inference that the collision did occurred based on the fact that in the video the cyclist was not seen riding pass the end of the Russian Embassy fence.

176. The Prosecution in making such a conclusion that the cyclist was **'dragged'** was required to produce evidence to show that that was the **ONLY** conclusion or explanation as to how the cyclist ended up 114 feet from the Point of Impact shown by the Defendant.

177. Certainly, there is no evidence to establish that the cyclist was dragged. There is no way that the Prosecution could have arrived at that one conclusion of the cyclist being dragged. More so, there is no way that this Court can conclude that the cyclist was dragged.

178. There was no evidence from the Pathologist to explain the injuries as stated on the Post Mortem Report Exhibit D 1-2. This would have assisted the Court in determining whether the injuries on Exhibit D 1-2 were as a result of someone being thrown into the air and landing on the road surface or someone being dragged along the road way after collision.

179. There are so many inferences that can be drawn as to how the cyclist ended up 114 feet after the Point of Impact shown by the Defendant. As such the Court rejects the Prosecution's contention that the cyclist was dragged along the road way.

WHAT IS THE RELEVANCE OF SPEED IN DETERMINING DANGEROUS DRIVING?

180. The Prosecution relies on the following pieces of evidence to establish speed:
- The distance of 124 feet, which is from the Point of Impact shown by the Defendant to where his vehicle ended up.
 - The distance of 114 feet, which is the Point of Impact shown by the Defendant to where the cyclist ended up.
 - The injuries as stated on the Post Mortem report that the cyclist received.
 - The damages seen on both the motor vehicle and the bicycle as recorded on the Vehicle Inspection Sheets
 - The Photographs

181. As pointed out earlier the video footage of the camera Lamaha Street North clearly establishes that the collision occurred before the Russian Embassy fence ends and not after the Russian Embassy fence ends going East. There is certainly a conflict with the point of impact shown by the Defendant. This conflict creates an issue as to the accuracy of all the measurements.

182. Nevertheless, if the Court is to accept these measurements as presented in the Prosecution's case the Court must determine what weight is to be attached to these measurements when considering the relevance of Speed.

183. The explanation given by the Defendant in the Prosecution's case is that he was driving at a slow rate of speed. There is no evidence in the Prosecution's case as to what is the Speed Limit for Clive Lloyd Drive. This Court takes Judicial Notice that in accordance with the Second Schedule of the Motor Vehicle and Road Traffic Act Chapter 51:02, in June 2009 the speed limit from Clive Lloyd Drive to Better Hope was increased from 64km/h to 80km/h.

184. The Prosecution was required to establish that the Defendant was driving in a manner dangerous to the public. The Court was also required to consider the nature, condition and use of Clive Lloyd Drive. The Court was also required to consider the amount of traffic which was actually at the time or reasonably expected to be on the said road.

185. From the measurements, photographs, damages recorded on the Vehicle Inspection Defect Sheets and the injuries stated on the Post Mortem Report that the cyclist received, the Prosecution wants the Court to draw the inference that the Defendant was speeding. However, it should be noted that speed is not the sole factor in determining whether the Defendant drove in a manner dangerous to the public.

186. The Court must determine what was the manner or nature of the Defendant's driving on Clive Lloyd drive and whether that nature of driving fell below the standard expected of a competent and careful driver. There is no evidence in the Prosecution's case that established the nature or manner of the Defendant's driving and that the Defendant's manner of driving was dangerous to the public.

CONCLUSION

187. There is no other evidence in the Prosecution's case that establishes how the collision occurred other than the explanation given by the Defendant in the Prosecution's case. There is no doubt that a collision occurred. There is no doubt that the cyclist Jude Bentley died. There is no doubt that the Defendant Gary Best was the driver of Motor Vehicle PRR 8182.

188. The explanation given by the Defendant is that he was faced with a sudden emergency of a cyclist appearing in front of him. He adopted an evasive action by going for the brakes, swerving South but despite his actions he collided with the cyclist.

189. There is no evidence in the Prosecution's case that establishes where the cyclist was prior to the collision. There is no other evidence that discredits the Defendant's explanation of the cyclist appearing suddenly in front of him.

190. Further this Court observes the following:

- We do not know whether the cyclist was proceeding in the corner of a drive lane prior to collision.
- We do not know whether the cyclist was in the middle of the road or middle of a drive lane prior to collision.
- We do not know where the cyclist appeared suddenly from or whether the cyclist did appear suddenly in front of the Defendant's vehicle.
- We do not know whether the cyclist crossed lanes in the path of the Defendant's vehicle.

We just do not know what happened because the Prosecution's case has raised more questions than answers.

191. There is no other evidence in the Prosecution's case that establishes another version of how the accident occurred. What the Prosecution has presented is beginning of the incident and the impeded ending or blurred ending of the incident but the middle of the incident is missing. In fact 17 seconds of this incident is unaccounted for.

192. As stated earlier the only evidence as to what happened within those 17 seconds is what the defendant stated in his explanation to the police.

193. The Prosecution has asked this Court to draw inferences from evidence that was not presented in Court. The Prosecution's case contains many gaps that this Court cannot fill in and to do so will be inviting this Court to speculate.

194. This Court therefore finds that a crucial element in the Prosecution's case was not established, that is, whether the Defendant was driving in a manner dangerous to the public on Clive Lloyd Drive on the 8th February, 2020.

195. This Court finds that the Prosecution has failed to establish a prima facie case against the Defendant for the Offence of Causing Death by Dangerous Driving.

196. Accordingly, the Submissions of No Case to Answer is upheld and the Matter is Dismiss.

.....

MAGISTRATE RHONDEL WEEVER.
3rd December, 2020.