

Mock Trial Script

2016 Round 1

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This is a criminal prosecution instituted by the Police against the defendant under the Crimes Act 1900 Section 52A (3) Dangerous driving occasioning grievous bodily harm. The prosecution will need to prove their case beyond reasonable doubt.

The Prosecution team will receive:

1. Court Attendance Notice
2. Legal Notes
3. Statement by Alex Jones
4. Statement by Marty Hill

The Defence team will receive:

1. Court Attendance Notice
2. Legal Notes
3. Statement by Jamie McGowan
4. Statement by Lee Costello

LEGAL NOTES

52A Dangerous driving: substantive matters

(3) Dangerous driving occasioning grievous bodily harm

A person is guilty of the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

To make out the offence the Crown must establish beyond reasonable doubt each of the following essential facts or ingredients of the offence:

1. that the accused was the driver of a vehicle; and
2. that vehicle was involved in an impact, with another vehicle; and
3. that the impact caused grievous bodily harm; and
4. that, at the time of the impact, the accused was driving the vehicle in a manner dangerous to another person.

If the Crown fails to establish any one of the four essential facts or ingredients of the offence of dangerous driving you must find the accused “not guilty”.

For the purposes of this trial there is no dispute that Jamie McGowan was the driver of the motor vehicle or that Grievous Bodily Harm was caused to Alex Jones. The only element in dispute is whether Jamie McGowan drove in a manner dangerous.

CASES

R v Coventry [1938] SASR 79 at 86

The fact to be proved in this case was that the defendant was driving in a manner which was dangerous to the public, and if it is necessary to attempt a definition we should say that driving in a manner dangerous to the public means the act of driving in a manner which any ordinary person (in the situation of the driver) would recognize as dangerous, in the sense that it involves a risk of injury to others which exceeds the ordinary risks of the road – the commonplace incidents of the use of the highway in question under the conditions of modern transport by fast-moving vehicles.

R v GILL [2012] SADC 76 (8 June 2012)

The accused was driving a Landcruiser with four passengers, towing a laden work trailer along the Stuart Highway north of Coober Pedy. He failed to notice how quickly he was gaining on a van because he was operating his iPod - Whether the defective lookout amounted to driving in a manner dangerous to the public.

Judge Barrett in summing up - I am satisfied beyond reasonable doubt that the accused's driving would have been recognised by a reasonable person in his position as representing an unacceptable risk of danger to the public. The accused was driving a heavily laden vehicle towing a trailer. Those factors required a high degree of vigilance. His inattention to his driving while he operated the iPod was more than momentary. He had either made no judgment about the speed of the van or had totally misjudged its speed. He was oblivious to the rate at which he was gaining on the van while he manipulated the iPod. He knew the van was there, but he drove inattentively towards it. He was inattentive for too long. His lookout was dangerously defective. He was driving in a manner dangerous to the public.

There was no dispute that the accused's driving was the cause of the rollover. The rollover was the principal cause of the deaths of the two passengers. It was a secondary cause of their deaths that they were not wearing their seatbelts

Regina v Hopton Matter No Cca 60099/98 [1998] NSWSC 566 (8 October 1998)

Judge Karpin "In a case in which inattentiveness is the basis of the allegation that the manner of driving constituted a manner which was dangerous for the purposes of the section, it is often the case that the jury will not be properly instructed if they are left to speculate as to the level of negligence which may be appropriate. In a context in which there was a specific Crown submission, which her Honour summarised without comment, that was consistent with a lower level of negligence than is required for the commission of the offence, it would have been appropriate, and will usually be appropriate, for the trial judge to direct the jury in more specific terms by warning them that mere negligence would not be sufficient. The jury must be left in no doubt that the level of seriousness is not subject to exceptions, in the sense that the lower standard (of negligence) is not sufficient for the purpose of the offence. In circumstances where inattentiveness is the sole ground, it will often be found to be the case that the jury should be instructed as to the relevant distinctions."

Court Attendance Notice

You are required to attend the Sydney Local Court on a date to be fixed.

Defendant's details

Name: MCGOWAN, Jamie
Date of Birth: 21.06.1975
Address: 12 Phillip St, Sydney

Prosecutor

OIC (prosecutor): Sargent Claudia Pearce
CAN created by: Sargent Claudia Pearce
Apprehended by: Sargent Claudia Pearce 10:00 on 27.06.2012

Details of offence

Crimes ACT 1900 – Section 52A
Dangerous Driving: substantive matters
(3) Dangerous driving occasioning grievous bodily harm.

That Jamie McGowan did, on 27 June 2012, at Newtown, did drive a motor vehicle, to wit motor car registered TAD123 in a manner dangerous to the public, when the vehicle was involved in an impact whereby grievous bodily harm was caused to Alex Jones.

Statement of Jamie McGowan

1. My name is Jamie McGowan and I live at 12 Phillip St Sydney. I am an advertising executive for Happy Smiles Advertising.
2. On 27th June 2012 I was travelling to a meeting with some potential new clients. The meeting was in Church St Newtown, an area of Sydney I am not very familiar with.
3. The meeting was at 11am and I left the office at 9.30am to allow plenty of time to not only find the office, but also parking, as I know parking in the area can be quite difficult. I also didn't want to be in a rush as this was a very important meeting and arriving late or looking flustered was not going to impress them. I had been working on winning this client for quite some time and was very nervous about the meeting.
4. I was driving along looking for the turnoff for Church St, when I suddenly realised I had just driven past the turn off which meant I was now going to have to turn around and head back the other way. The easiest way to do this was to turn right into the next side street and perform a U turn, so I made a right turn into Park St.
5. The side street was extremely quiet and I pulled over so I could prepare to make a U turn and head back the way I was meant to be going. I quickly glanced down at the piece of paper on my passenger's side seat to confirm the number of the business I was looking for to work out what end of the street it was on.
6. After I confirmed which end of Church St I needed to be on, I proceeded to indicate and pull out onto the road to perform a U Turn.
7. As I pulled out to turn around, suddenly I heard a loud bang and felt my car being hit. It took me a moment to realise that I had been hit by a motorcycle.
8. Next thing I know, there is someone helping me out of my car via the passenger's side door, as I was unable to get out of the driver's side door as this is where the motorbike had hit my car.
9. As soon as I was out of my car and ran to see the motorbike rider who had been thrown over the bonnet of my car and was lying on the side of the road. He/she was conscious and told me his/her name was Alex. I told Alex to stay still and that an ambulance was on its way.
10. The ambulance and police arrived and while Alex was being treated, the man/woman who helped me out of my car came over to me and introduced themselves as Lee Costello. Lee said he/she lived on the street and had often seen Alex ride fast down the street and he/she was lucky they didn't hit Alex themselves on a couple of occasions.
11. At no stage did I admit that the accident was my fault nor did I apologise. I mean I am sorry Alex got hurt, but he/she came out of nowhere. Before I made the U Turn I checked that no traffic was coming, then next thing I know Alex had hit me. He/She must have been riding really fast as one minute there was nothing and the next, I am being helped out of my car.
12. The police have charged me with Dangerous Driving Causing GBH, but while I admit I was driving the car, I was not driving dangerously. I did everything I was supposed to do, I had pulled over, made sure there was no traffic coming and then indicated and slowly started to pull out. How is this dangerous? I have never been charged by the police, not even a speeding fine.

Statement of Lee Costello

1. My name is Lee Costello and I live in Park St, Newtown. I am a student and am currently studying engineering at Sydney University.
2. On 27th June 2012 I was sitting on my balcony studying and enjoying the sunshine and trying to decide whether or not to go to the library.
3. As usual the Street was very quiet. The speed limit is only 50km as it is a built up area, although cars and motorcyclists especially like to go a lot faster and the street is very long and straight, perfect for speeding.
4. I have often thought the council should put in some speed bumps to slow drivers down as it was only going to be a matter of time before someone got hurt. I have had a couple of close calls myself.
5. At about 10.30am I heard a motorcycle accelerating loudly as it came around the corner, as this is a sound I hear often I didn't even look up until I heard a loud bang and realised there had been an accident.
6. I raced out to the road and saw that a motorcyclist was lying in the middle of the road and someone was leaning over them. The man/women yelled at me to call an ambulance, which I did.
7. As I knew the ambulance was on its way, I then raced over to make sure the person in the car was ok. He/she seemed to be ok and I helped him/her out of the car via the passenger side door.
8. The driver and I both then went over to the motorbike rider to see if they needed any assistance. The rider was conscious and told us his/her name was Alex.
9. The ambulance then arrived and the driver of the car and I went and sat on the side of the road to wait and speak to the police. The driver, who I now know as Jamie, mentioned that the bike had come from nowhere, and I replied that I was not surprised as motorbikes often speed down this road.
10. The number of cars and bikes that come flying down Park St I am not surprised that there was finally an accident. It can often be quite hazardous for the cautious drivers who chose to drive along the road.

Statement of Alex Jones

1. My name is Alex Jones and I am 32 years old.
2. I am employed as a maintenance technician for a cruise ship company.
3. On the 27th June 2012, I was enjoying a day off and had gone for a motorbike ride with my best friend Marty.
4. Marty and I were just on our way to his/her place and had come along King Street and then turned onto Park St. King Street is always busy, you have to really pay attention as drivers have a habit of making sudden decisions to turn or stop and it was a relief to turn into the much quieter Park Street.
5. As we turned left onto Park St we began to travel down the straight road doing the speed limit of 50km.
6. Suddenly out of nowhere a car pulled out in front of me, without indicating. I had no other option but to go but straight into the car. I was thrown over the bonnet of the car and landed in the middle of the road.
7. I must have blacked out as next thing I remember is Marty leaning over me and asking if I was ok. He/she said an ambulance had been called and to just stay really still. I was in a lot of pain.
8. The driver of the car came over and asked if I was ok. He/she then apologised and said that they did not see me as they had been busy looking at something on the passengers seat and had been distracted.
9. I was taken to the hospital by ambulance and spent a couple of weeks in hospital as I had broken both my legs and needed to have pins and plates put into them to help them heal. I now have trouble walking and cannot stand for long periods of time.
10. I am back at work, but am not able to ride my motorcycle as my legs make it too painful.
11. I was not speeding when I turned into Park St. I am a very careful bike rider and know that there are a number of dangers on the road and you always need to be vigilant. I suffered a lot of pain all because a driver was distracted and did not watch where they were going.

Statement of Marty Hill

1. My name is Marty Hill and I live in Park St Newtown.
2. I work as a cabin attendant for a cruise company.
3. On our days off Alex and I enjoy going for a bike ride up the coast, it is a great way to spend the day.
4. On 27th June, Alex and I were heading off for a bike ride, when we were half way down King Street and I realised I had forgotten my wallet, so we turned around to go back and get it.
5. It was about 1030am and traffic on King St was, as usual really busy, however we were soon onto Park St and I was relieved we would be back at my place soon so I could get my wallet so we could be back on our way.
6. As we turned down Park St, I was a little behind Alex as I don't like to ride too closely to the rider in front as I think it is unsafe.
7. We were doing about 50km when suddenly a car pulled out in front of Alex and he/she was hit quite hard and went over the bonnet of the car.
8. I quickly pulled over on my bike and ran over to Alex. He/She had lost consciousness and I was screaming his/her name to try and get them to come round.
9. One of the neighbours came running out and I yelled to him/her to call an ambulance.
10. Alex slowly came round and the driver came over to make sure he/she was ok. The driver said something about not paying attention as they pulled out, but I was too busy worrying about Alex who was bleeding badly so I didn't really hear what was said.
11. The ambulance arrived and Alex was taken to hospital.
12. Alex can no longer ride his/her bike and I really do miss being able to get out on the open road with him/her, however I am very grateful my friend is ok. I just wish drivers would pay more attention on the road.