

**Driver in incident occasioning bodily harm,
failure to stop, render assistance and give information**

s 54 Road Traffic Act

From 1 January 2021

Glossary:

att	attempted
agg	aggravated
BAC	blood alcohol content
circ	circumstances
conc	concurrent
cum	cumulative
disqu	disqualified
ct	count
DDOGBH	dangerous driving occasioning grievous bodily harm
DDOD	dangerous driving occasioning death
DDOBH	dangerous driving occasioning bodily harm
GBH	grievous bodily harm
imp	imprisonment
occ	occasioning
PG	plead guilty
susp	suspended
TES	total effective sentence

Office of the Director of Public Prosecutions

No.	Case	Antecedents	Summary/ facts	Sentence	Appeal
3.	<i>The State of Western Australia v Maxton</i> [2023] WASCA 174 Delivered 31/08/2023	<p>23 yrs at time offending. 24 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Significant criminal history; trespass; gain benefit from fraud; poss prohibited drugs; three offences of agg robbery; poss controlled weapon; breach of bail.</p> <p>Raised in a good family.</p> <p>Limited work history.</p> <p>Symptoms of anxiety and depression.</p>	<p>Ct 1: GBH. Ct 2: Driver Failing to stop after incident occasioning GBH.</p> <p>Immediately prior to the offending, there was an altercation between two groups. The first group comprised of the respondent and five others. The second group comprised of the victim and two others.</p> <p>The genesis of the altercation was a feud that occurred several hours previously at a party. After the party, the groups drove to a designated location in anticipation of a fight.</p> <p>The respondent did not actively participate in the fight; however, he drove his group to the location.</p> <p>As the fight broke out, both groups were armed. The victim was struck by a member of the respondent's group with a machete. The victim later gained possession of the machete.</p> <p>The victim struck a member of the respondent's group (Mr H) with the machete, then chased him. The victim struck Mr H with the machete causing him to fall to the ground. Two others continued to assault Mr H as he was on the ground.</p> <p>The respondent got into the driver's seat of the vehicle and three others entered as passengers. The respondent then drove the vehicle towards the altercation. Within 27 m of the collision, the respondent accelerated slightly, before deliberately moving his vehicle from left to right with the intention of frightening the Victim's group.</p> <p>As the respondent swerved, the victim lurched into the direction of the car. The respondent's vehicle struck the victim,</p>	<p>Ct 1: 3 yrs 2 mths imp. Ct 2: 12 mths imp (conc).</p> <p>TES: 3 yrs 2 mths.</p> <p>EFP.</p> <p>MDL disq 2 yrs 6 mths.</p> <p>The sentencing judge found that it was never the respondent's intention to strike the victim with his car. Rather, it was 'just a terribly tragic combination of circumstances.'</p> <p>The sentencing judge made numerous findings of fact, including: the respondent was aware that 'some kind of physical fight was going to break out'; that a physical fight was a likely consequence of driving the group to the location; the respondent was not encouraging what was happening during the fight before he got into the vehicle; and the respondent had a genuine fear that Mr H may have been hurt even worse if he did not intervene.</p> <p>The sentencing judge concluded that the respondent's conduct fell 'somewhere in the middle of a range'.</p> <p>The sentencing judge found that the respondent's restraint from becoming involved in the altercation was 'extenuating'.</p> <p>The sentencing judge found that the respondent's pleas of guilty showed genuine remorse.</p> <p>Offending had a calamitous effect upon the victim's family.</p>	<p>Appeal allowed.</p> <p>Appeal concerned length of sentence imposed on ct 1; first limb of totality principle; and error in finding of fact by the sentencing judge.</p> <p>Resentenced:</p> <p>Ct 1: 4 yrs 8 mths imp. Ct 2: 4 mths imp (cum).</p> <p>TES: 5 yrs imp.</p> <p>EFP.</p> <p>MDL disq 2 yrs 6 mths.</p> <p>At [88] 'in the present case, the primary judge found that: (a) the respondent "actually refrained from any involvement at all" in the fighting between the two groups before he left the scene of the fighting and got into the Honda Civic vehicle; and (b) the respondent "would have kept right out of" the fighting had he "not panicked that [his] cousin was at risk of something very bad happening to him", the respondent "having already seen him assaulted".</p> <p>At [92] 'in our opinion, when the primary judge's findings...are evaluated ... it is apparent that the findings ... did not mitigate (let alone) substantially mitigate) the respondent's offending conduct in unlawfully doing grievous bodily harm to [the victim].'</p> <p>At [94] 'if the respondent had participated physically in the fighting, that would have aggravated his offending conduct. If the respondent had attempted by lawful means to intervene for the purpose of stopping the fighting, that may have mitigated his offending conduct. However, the finding set out at [88] above were not extenuating and did not mitigate the respondent's offending conduct. It was not reasonably open to her Honour to conclude that the findings set out at [88] above "substantially mitigate[d] [the respondent's offending] conduct" and consequentially should result in the imposition of a lesser sentence.'</p> <p>At [106] 'the objective seriousness of the respondent's offending in relation to count 1 must be assessed having regard to all of the relevant facts and circumstances, including': (a) the respondent's deliberate and aggressive use of the vehicle; (b) the respondent swerving the vehicle at a speed of 5 to 61 km an hour; (c) the respondent serving the vehicle in a main street close to the victim's group; (d) the vulnerability of the victim and his group; (e) the obvious risk that the victim's group would unpredictably move in an effort to evade the vehicle; (f) the obvious risk of serious harm; (g) the shocking injuries suffered by the victim; and (h) the devastating impact of the victim's injuries on his</p>

			<p>who then made contact with the bonnet and windscreen. The vehicle was travelling at about 56 or 61 km an hour when it struck the victim. The respondent knew his vehicle struck the victim; however, he drove off.</p> <p>The victim suffered a traumatic brain injury, a base of skull fracture, a right zygomatic arch fracture, a right leg fracture, and head lacerations. The victim is now in a minimally conscious state. He is non-verbal.</p>		<p>family.</p> <p>At [107] ‘the respondent’s offending was aggravated by his having been on parole for earlier offending when he committed the offence in question.’</p> <p>At [111] ‘... the respondent’s statements [made to family members while in custody] ... indicate that at that stage the respondent was not genuinely remorseful and had not fully accepted responsibility for his actions.’</p> <p>At [116] ‘the sentence for count 1 was not merely “lenient” or “at the lower end of the available range”. It was significantly less than the sentence that was open to the primary judge on a proper exercise of her discretion.’</p> <p>At [121] ‘... having regard to all relevant facts and circumstances and all relevant sentencing factors, properly marking the seriousness of the respondent’s overall offending required that part of the sentence for count 2 be served cumulatively upon the sentence for count 1.’</p>
2.	<p>Meadcroft v The State of Western Australia</p> <p>[2023] WASCA 98</p> <p>Delivered 21/06/2023</p>	<p>52 yrs at time sentencing.</p> <p>Convicted after trial (ct 1). Convicted after PG (cts 3 and 4).</p> <p>No prior criminal history; prior traffic convictions for alcohol-related driving offences; no offending for more than thirty yrs.</p> <p>Death of father mths preceding trial; carer for his mother, now in a nursing home; suffered financially, including loss of his home, due to providing assistance to his parents.</p> <p>Father of three; close family.</p> <p>Good work history; qualified painter; employed as a trainer for 7 yrs in a correctional services facility.</p>	<p>Ct 1: Act with intent to harm. Ct 3: Driver failing to stop after incident occasioning GBH. Ct 4: Driver failing to report incident occasioning GBH.</p> <p>The victim was cycling home and crossing a roundabout when Meadowcroft, driving a four-wheel drive utility vehicle equipped with a bull bar, came from the victim’s left at speed.</p> <p>The victim was half-way across the road when he stopped on seeing Meadowcroft’s vehicle approaching. Annoyed, that he was forced to ride around the front of Meadowcroft’s vehicle, the victim made multiple obscene finger gestures at Meadowcroft.</p> <p>After passing the victim Meadowcroft did a U-turn. He then crossed to the incorrect side of the road, mounted the kerb and into the path of the victim. His vehicle struck the victim and his bike, causing the victim to fly through the air and into a fence.</p>	<p>Ct 1: 8 yrs imp. Ct 3: 2 yrs imp (conc). Ct 4: 1 yr imp (conc).</p> <p>Sentence for ct 1 to commence 6 mths after commencement of other sentences.</p> <p>TES 8 yrs 6 mths imp.</p> <p>EFP.</p> <p>The trial judge was satisfied beyond reasonable doubt that the appellant had an intention to endanger the life of the victim; this intention, combined with the act of driving ‘speaks to the singular serious example of this particular offence’.</p> <p>The trial judge did not accept the appellant was only travelling at a little over 20 km per hr; he did not reduce his acceleration, nor did he apply his brakes before the collision; the appellant crossed to the incorrect side of the road, mounted the concrete kerb and continued to drive on the verge for a distance of 12 metres before making contact with the victim and his bicycle on the footpath.</p> <p>Injuries significant impact on victim’s life; spent extended period in hospital engaged in</p>	<p>Dismissed (leave refused – error in finding).</p> <p>Appeal concerned length of sentence and error in finding (appellant had a subjective intent to endanger the life of the victim).</p> <p>At [110] ... his Honour’s findings regarding the intent of the appellant were plainly open. ... His Honour found that the appellant intended to drive close to [the victim] and, even if he did not intend to hit him, he did intend to drive in a manner that endangered the life of [the victim]. Having regard to the fact that the driving involved crossing the road, mounting the kerb, driving across the gravel verge and towards a cyclist on the footpath, that conclusion was, with respect, irresistible.</p> <p>At [116] His Honour was satisfied beyond reasonable doubt that the appellant intended to endanger the life of [the victim]. ... The risk of death was significant and aggravates the offending.</p> <p>At [117] ... the injuries inflicted amount to a very serious example of GBH, let alone bodily harm ... It is accurate to describe [the victim’s] injuries as catastrophic.</p> <p>At [118] ... the potential for [the victim] to have been killed is readily apparent from the appellant’s manner of driving a turbo-charged vehicle equipped with a bull bar at a cyclist. This significantly increases the seriousness of the appellant’s offending.</p> <p>At [126] There is no doubt that the sentence of 8 yrs imp imposed on ct 1 was a severe one. However, having regard to the circumstances of the offence and the catastrophic consequences for the victim that sentence was appropriate. ...</p>

			<p>After the impact Meadowcroft drove from the scene. At no stage did he stop or report the incident to police.</p> <p>The victim suffered very significant injuries, including to his spine resulting in him being a tetraplegic and confined to a wheelchair.</p>	<p>rehabilitation; suffered PTSD and depression; unable to work since the collision.</p> <p>Time in custody likely to be more arduous as a result of previous employment with Department of Corrections.</p> <p>Demonstrated remorse; unlikely to reoffend; good prospects of rehabilitation.</p>	<p>At [127] This was an offence involving a deliberate act intended to harm the victim. That places it into a more serious category than driving offences involving mere negligence. ...</p>
<p>1. <i>Bramble v The State of Western Australia</i></p> <p>[2021] WASCA 191</p> <p>Delivered 27/10/2021</p>	<p>18 yrs 2 mths at time offending. 20 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>No prior criminal history.</p> <p>Left school yr 9; completed certificates in retail management.</p> <p>Employed at time of sentencing.</p> <p>Supportive family.</p> <p>No history of health or substance abuse problems.</p>	<p>Ct 2: Fail to report a road traffic accident.</p> <p>Ct 3: Driver failing to report incident occasioning death or GBH.</p> <p>Bramble was the driver of a motor vehicle. Her partner and his parents' passengers in the vehicle.</p> <p>As Bramble drove along she, or one of the others in the car, noticed a man, Mr T, and woman engaged in a domestic dispute on the opposite side of the road. The couple had pulled over following an argument.</p> <p>It was jointly decided by those in Bramble's car to stop and give some assistance to the woman. Bramble pulled over and her partner and his father got out of the vehicle. She then drove further down the road, executed a U-turn, drove back to the other car and parked beside it. Bramble remained seated in her vehicle.</p> <p>Bramble's partner and his father became involved in a physical altercation with Mr T, resulting in them falling to the ground. At some point Mr T telephoned his brother, asking him to come to the scene with others to give assistance.</p> <p>Bramble's partner and his father and mother returned to their vehicle and got in. Bramble then reversed in an attempt to move away from Mr T. As she</p>	<p>Ct 2: 18 mths imp (conc); MDL disqu 2 yrs.</p> <p>Ct 3: 9 mths imp (conc); MDL disqu 12 mths (conc).</p> <p>TES 18 mths imp.</p> <p>The sentencing judge found the GBH suffered by Mr T was attributable to the appellant's manner of driving, notwithstanding her acquittal on ct 1 (DDOGBH); explained by her acting in circ of sudden or extraordinary emergency.</p> <p>The sentencing judge found the offending very serious; the appellant was the designated driver; she was aware that her car had impacted with Mr T and that she had a duty to stop and check on his welfare.</p> <p>The sentencing judge accepted the appellant panicked; that there was some chaos in the car and that the others in the vehicle, including her partner's parents, did not assist by telling her to stop, either at the time of the impact or subsequently and that 'some responsibility for all of this should be sheeted home to others in the car'.</p> <p>The sentencing judge found imp the only appropriate penalty; that suspending the sentence was not justified because of the seriousness of the offences and the need for the public to feel protected.</p> <p>Appellant complied with bail conditions for more than 2 ½ yrs; no further offending; strong prospects of rehabilitation.</p>	<p>Appeal allowed.</p> <p>Refused leave to appeal on grounds sentencing judge made factual errors (criminally responsible for Mr T's injuries; offending aggravated by her callous driving off without stopping and community protection a relevant factor).</p> <p>Appeal concerned type of sentence.</p> <p>Resentenced:</p> <p>Ct 2: 12 mths imp, susp 12 mths; MDL susp 2 yrs.</p> <p>Ct 3: 6 mths imp (conc), susp 12 mths; MDL susp 12 mths (conc).</p> <p>At [45] The circ of the present offence were unusual. The appellant stopped her car in order to render assistance to a woman who she believed was the victim of domestic violence. This led to [Mr T] becoming aggressive and threatening to the occupants of the appellant's car. ... It was accepted that [she] drove from the scene in circ where she was panicking and felt frightened. Those circumstances explain, although they do not excuse, the failure to stop and render assistance.</p> <p>At [46] While the trial judge placed considerable emphasis on the seriousness of the injuries suffered by [Mr T] there was no evidence to suggest that the appellant was aware of the seriousness of those injuries at the time. Nor is there any reason to think that [she] was deliberately seeking to frustrate an investigation by driving off. ...</p> <p>At [50] The appellant's youth ... also a highly pertinent factor in assessing her degree of culpability. It was relevant in assessing her failure of judgment in driving from the scene and not reporting the incident As a frightened 18-yr-old it might be expected that she would be more impulsive and less able to appreciate the seriousness of the situation and the possible consequences. Nor was [she] assisted by the older adults in the car. ... That she subsequently [reported the accident] and admitted that she was the driver, was to her credit.</p>	

			<p>looked over her shoulder to check whether it was clear to drive onto the road Mr T approached the car, waving his arms and shouting threats, attempting to stop the car. Believing she needed to quickly depart the scene Bramble drove onto the road. Mr T, who was standing on the road continuing to behave in an intimidating manner, was struck by the car. He rolled onto the bonnet and into the vehicle's windscreen. He was rendered unconscious.</p> <p>Bramble drove from the area and returned home. Some days later she saw publicity regarding the incident and voluntarily attended a police station and admitted to being the driver. She denied being aware that she had hit Mr T.</p> <p>Mr T suffered a fractured skull. He remained in hospital for 10 wks. He was left with an acquired brain injury and changes to his personality.</p>		<p>At [51] While the circ of the offence, including the seriousness of the injuries, justify the imposition of terms of imp for these offences the failure to susp those sentences was unjust and unreasonable. ...</p>
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