



Carefully considered criminal defence strategy delivers just result for Sydney bus driver

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In 2021, Hall Payne Lawyers represented a member of the Rail, Tram and Bus Union (**RTBU**) in relation to [criminal charges](#) of dangerous driving occasioning death and negligent driving occasioning death. In July 2021, the RTBU member pleaded guilty to only the second charge; negligent driving occasioning death. In this case, the Court's decision affirms the significant benefits of having experienced legal representation when facing serious traffic charges.

The Court imposed a Conditional Release Order (**CRO**) with conviction and the minimum 12-month licence suspension.

A Conditional Release Order (which may be made with or without a conviction), is a community-based sentence for the lowest level of offending. They replace the former sentencing option of a good behaviour bond. For the term of the CRO, an offender must not commit any offence and must appear before the Court if called on to do so at any time.

Background

In 2020, the RTBU member, whilst operating a STA bus in Sydney, stopped at an intersection and on a green light turned right across two lanes of oncoming traffic. As the RTBU member executed the right-hand turn, an oncoming scooter rider collided with the bus. The scooter rider was seriously injured in the accident and taken to hospital.

Police were called to the scene of the accident and arrested the RTBU member for the purposes of undertaking mandatory drug and alcohol testing.

After the RTBU member was interviewed by police, he was charged with dangerous driving occasioning grievous bodily harm and negligent driving occasioning grievous bodily harm. The RTBU member was released on bail and his licence suspended immediately.

Driver's criminal charges upgraded after death of the scooter rider

Tragically, the scooter driver passed away and the RTBU member was thereafter charged with the more serious offences of dangerous driving occasioning death and negligent driving occasioning death.

Dangerous driving occasioning death is an indictable offence (that is, a serious criminal offence). The Department of Public Prosecutions (**DPP**) and the defendant (the driver) are required to go through a process of charge certification and case conferencing prior to sentencing (or hearing) for an indictable offence.

The maximum penalty for dangerous driving occasioning death is 10 years imprisonment.

A term of imprisonment would have shattered our client and his family. The RTBU member had an impeccable driving record and was known to be a safety focused and conscientious driver who loved his work at the STA. The RTBU member was not only facing the prospect of imprisonment but also the end of his career as a bus driver.

Our defence strategy sees the more serious charge dropped

Initially, Hall Payne made representations to the DPP that they withdraw both charges. This was on the basis that the facts did not support a finding that our client's driving was dangerous or in fact negligent and there were no reasonable prospects of conviction for either charge.

The DPP's evidence, including most notably the CCTV footage, showed that our client checked his mirrors and looked for oncoming traffic. He simply did not see the oncoming scooter rider.

Furthermore, we commissioned expert evidence which showed that at the time of the collision, the scooter rider was travelling at 25km/h above the speed limit whilst our client was turning his bus at a cautious 7km/h.

Although the DPP refused to withdraw both charges through the case conferencing process, they did agree to drop the dangerous driving charge in exchange for our client agreeing to plead guilty to the negligent driving charge for sentence in the local Court.

Negligent driving occasioning death has a maximum penalty of 18 months imprisonment and a fine of \$3,300.

Defence strategy at the sentencing hearing

At the sentencing hearing, we argued that the Court should exercise its sentencing discretion pursuant to section 10(1)(b) of the *Crimes (Sentencing Procedure) Act 1999* and not impose a conviction. This is a power available to the Court to exercise when it

would be inexpedient to impose a conviction due to the circumstances of the case.

To carry out this strategy, we ensured that the member had completed the traffic offender's intervention program and had obtained persuasive references from his supervisor, colleagues and medical professionals detailing his good character and the devastating impact of the collision and subsequent criminal proceedings, on our client.

We relied on the following circumstances:

- the offence was a tragic human error;
- the collision occurred in circumstances where our client had looked for oncoming traffic and simply did not see the scooter rider speeding towards him – the degree of negligence was at the lowest end;
- our client pleaded guilty to the lesser charge at the earliest available opportunity and is of exceptionally good character;
- our client was deeply remorseful and had suffered from immense guilt and financial stress following the accident; and
- a conviction would be devastating for him, both in relation to the loss of his career and the lifelong impacts of a criminal conviction.

The DPP sought the imposition of a Community Corrections Order (**CCO**) commonly known as a community service order. A CCO is a more serious penalty than a CRO (referenced earlier in this article) and requires the offender to comply with standard conditions.

The sentencing Magistrate also has discretion to order a number of other conditions aimed at reducing the risk of re-offending, such as:

- prohibiting the consumption of alcohol or drugs;
- imposing a curfew;
- supervision by a community corrections officer; or
- community service.

The Court's decision to impose a Conditional Release Order

Whilst the Court found that our client was of impeccable character and had shown immense remorse since the accident, the Court decided that given the loss of life the sentencing principles required the Court to impose a penalty on the RTBU member.

Accordingly, the Court imposed a CRO (as opposed to the more serious penalty of a CCO), with conviction and a 12 month licence suspension.

Conclusion

In tragic circumstances, Hall Payne Lawyers and our client, with the support of his Union, the RTBU, developed and executed a strategy to obtain him a favourable outcome.

This case demonstrates the importance of:

- challenging the factual basis on which charges are laid;
- making persuasive submissions to the DPP when negotiating a plea; and
- providing detailed material regarding a defendant's good character.

Anyone can make a mistake with tragic and unforeseen outcomes.

When seeking to defend a traffic charge or have it dismissed, a considered legal strategy is required to ensure the Court is persuaded to impose an appropriate outcome.

Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

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