

**POLICE**

v

**RAFAL MAZIARZ**

Sentence: 8 December 2017

Counsel: Ms A Herman for the Crown  
Mr W Rasmussen for the Defendant

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**SENTENCING NOTES OF THE HONOURABLE JUSTICE CHRISTINE GRICE**

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[2:05:42]

[1] Mr Maziarz, you appear before me for sentencing on one charge of careless driving causing injury. It carries a maximum term of imprisonment of 5 years and a maximum fine of \$5,000 under the Transport Act. I may also impose a term of disqualification on you from holding or obtaining a driver's licence in the Cook Islands of up to 3 years.

[2] The charge rose out of an incident on 21 November. You were making a right hand turn into the Esther Honey facility and you crossed in front of a motorcycle being ridden by one of the victims. The other victim was a pillion passenger. You failed to check the road was clear before turning. Both victims suffered injuries as a result of the collision. Fortunately, they were not serious as have been a number of injuries in these types of accidents which have come before me in the last couple of weeks.

[3] Mr Rasmussen said there was some suggestion of contributory negligence. There was some hint that there might have been alcohol involved. Mr Rasmussen again made it very clear that was no part of his submission. He said you were not contesting the facts and accepted the standard of your driving in this instance was below that of a reasonable prudent driver.

[4] The victims have provided victim impact reports. They indicate that both of them suffered injuries, one of them more serious. Mr Napa fractured or sprained his wrist, it means that he is not going to be able to work for some time. The other victim has had to have at least one to two weeks off work for which she will not be paid.

[5] The injuries were to soft tissue in the main. The accident shook up the victims. They are angry. Their injuries have interfered with their lives and things they can do. Fortunately, it appears they are not going to be long term disabilities.

[6] The penalty for this offence was raised from 3 months imprisonment and \$100 fine by Parliament in 2007. A number of comments have been made in this Court and we have seen a parade of similar driving offences over the last 12 to 18 months. Driving related offences are of a major concern in the Cook Islands. In cases with aggravating circumstances a custodial sentence will be the starting point.

[7] As the Crown has said I have seen seven cases of this nature in the 2 weeks that I have been sitting here. Recently the Court of Appeal in *Police v Boyle*<sup>1</sup> noted that the Court had become increasingly concerned at this type of offending.

[8] Mr Rasmussen carefully went through a number of recent cases pointing out the similarity to this case and their differences. Most of those cases did involve quite serious injuries despite the carelessness involved being often minor inadvertence.

[9] He referred me to *Police v Ngametua*<sup>2</sup> where an overtaking incident in the main street led to the motorbike hitting a pedestrian who at the time was jaywalking. This led to 18 months probation for the offender. He was not ordered to pay any reparation or fine.

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<sup>1</sup> *Charles Boyle v Crown*, CA 5/17, 24 November 2017, Fisher White Grice JJ; *R v Charles Boyle*, CR 423/16, 27 July 2017, Doherty J

<sup>2</sup> *Police v Ngametua*, CRN 457/17, 4 December 2017, Grice J

[10] In *Police v Monga*<sup>3</sup> 12 months probation was imposed together with a \$1,500 fine and costs. This was a minor piece of inadvertence. Mr Monga came up to an intersection and because he could not see the road ahead clearly he nudged out and hit a motorcycle that was coming along the other road. Unfortunately, the rider suffered serious injury to his hip.

[11] *Police v Paterson*<sup>4</sup> was a case that Mr Rasmussen had acted on and so had some detailed knowledge of. A visitor to the Cook Islands hit a motorcycle on the side of the road. A mother and daughter on the motorcycle suffered reasonably serious injuries. In that case a \$3,000 fine was imposed as well as compensation of \$3,300.

[12] Mr Rasmussen submitted that these cases, particularly *Police v Patterson* featured a higher degree of culpability, seriousness or blame than involved in this case.

[13] In *Boyle* the Court of Appeal noted the range of circumstances that give rise to this type of offence. In offending where there has been alcohol involved such as *Reichardt*<sup>5</sup> a term of imprisonment has been imposed. In that case it was a term of 6 months imprisonment.

[14] In *Police v Bartley*,<sup>6</sup> reparation to the victim of \$10,000 had been paid voluntarily. The injuries were serious and were caused by the offender making a U-turn again. More a piece of inadvertence than a serious bad driving or driving under the influence of alcohol or involving speed. In that case a fine of \$750 was imposed together with a term of disqualification of 12 months.

[15] Mr Boyle was sentenced to 12 months' probation for turning across a roadway when it was dark. A motorbike going in the other direction collided with him. Mr Boyle was sentenced to 12 months probation with the first 3 months on community service with a number of conditions. Reparation of \$5,000 and compensation for emotional harm of \$2,000 was ordered. He was disqualified for 9 months from holding a drivers licence. Again the injuries to the motorcycle rider were quite serious. The Court of Appeal had no difficulty in finding that Mr Boyle's sentence was well within the range of appropriate sentences.

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<sup>3</sup> *Police v Monga*, CRN 75/17, 5 December 2017, Grice J

<sup>4</sup> *Police v Paterson*, CRN 81/17, 4 May 2017, Potter J

<sup>5</sup> *Police v Reichardt*, CR 257/17, 26 July 2017, Doherty J

<sup>6</sup> *Police v Bartley*, CR 463/2015, 11 March 2016, Potter J

[16] Reparation was not sought by the Crown. Mr Rasmussen explained that the motorcycle was insured by the victim or the victim's finance company because it was on hire purchase. The finance company received the sum of \$1,800 owing on purchase price of the bike. Presumably the victim will then receive the balance of the cost of the bike or cost of repairs, whatever the insurance company decides.

[17] Nevertheless, the victim has to pay a \$200 excess on the insurance personally. You have insurance cover on the rental vehicle you were driving. You paid a \$2,000 excess. You also had third party cover and the underwriter of that third party cover is the same as the underwriter of the motorbike, Tower Insurance. That should make things easier to finalise compensation for the victims.

[18] At present I do not have a figure that I can rely on to make a significant reparation order. I cannot make any compensation orders other than an amount for repairs and related disbursements unless you are to serve a period of probation. In that case, compensation can be ordered. However I do not intend to impose probation. Nonetheless I am going to order you to pay \$200 to the victim which will be the insurance excess. I will mention something more about the compensation later.

[19] Mr Rasmussen carefully pointed out your personal positions. You need to get back to work in the United States, your father is not well and that is also something you need to attend to. You have in fact had to stay in Rarotonga beyond your return date. You could not make the trip that you had planned to Aitutaki. You have had to stay in Rarotonga with only this to think about. You have expressed remorse and you pleaded guilty early for which you are entitled to a credit.

[20] As the Crown submitted the sentencing principles that I need to follow include holding you accountable for this, promoting responsibility in you and other people and in relation to the harm to the victim, consider appropriate reparation. I must also consider deterrence both for you personally but also the community to show that this type of offending must stop. At the same time I must consider the least restrictive outcome available in the circumstances.

[21] The Crown pointed out that no alcohol was present, no speed and it was in the lower range of culpability for this type of offending. You did however fail to check the way was

clear which is your obligation as a reasonable prudent driver. Mr Rasmussen and the Crown both submitted a non-custodial sentence was appropriate. I accept that submission.

[22] However, a signal needs to be sent to the community that these offences should not continue. I must consider deterrence.

[23] You need to leave the country reasonably quickly. Taking all the circumstances into account I have come to the conclusion that a fine is the most appropriate way of dealing with this matter. There is some difficulty concerning reparation therefore I will order the sum of \$200 payable to the victim motor bike owner. Mr Rasmussen will be addressing me in another proceeding concerning compensation shortly.

[24] In relation to a fine, the Crown submitted \$3,000. Mr Rasmussen thought that was high and submitted \$500 which I have had to say is not in the range.

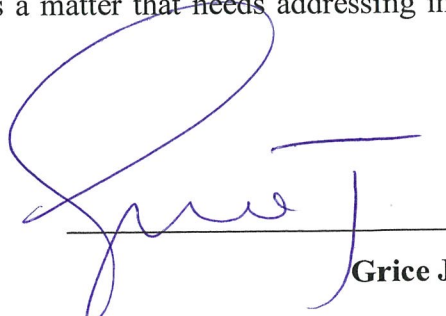
[25] Taking into account all the factors I impose a fine of \$2,000.

[26] Secondly, you are disqualified from holding or obtaining a drivers licence in the Cook Islands for a period of 2 years.

[27] Thirdly, you must pay:

- a) to the victim of his insurance excess toward the repair of the vehicle of \$200.
- b) Pay for the medical report costs of \$190 (to the police) and Court costs of \$50.

[28] I note Mr Rasmussen's comments about the criminal process which has led to this matter taking two weeks to get before the Court. That is a matter that needs addressing in another forum.



Grice J