

**POLICE**

v

**BENIAMINA TANGATAKINO**

Sentence: 8 December 2017

Counsel: Ms T Koteka 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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[2:48:48]

[1] Mr Tangatakino, you appear on one charge of careless driving causing injury. I know you have been sitting in Court for a while. You will have heard the concern with which these offences are now being regarded by the Court. It carries a maximum period of imprisonment of 5 years and a \$5,000 fine. As well, I can disqualify you from holding or obtaining a drivers licence for up to 3 years.

[2] The charge arose out of a unfortunate incident on the 14 October when you were driving with your 10 year old daughter in the car. You dropped off to sleep for a moment and the car veered off the road into a wall. You and you daughter were injured. She received not insubstantial injuries of a fracture and lacerations. Fortunately, as you have told Mr Rasmussen, there are no ongoing complications. This occurred because you were very tired and it is just as well that there was no-one standing by the wall who was seriously injured in this incident.

[3] Mr Rasmussen said you had been working late at nights. You are very hard working but clearly the culmination of weeks of too little sleep were catching up with you. To give you credit you took responsibility for the incident immediately.

[4] The penalty for this offence was raised from 3 months maximum imprisonment and \$100 fine in 2007. You have heard comments today that the Crown is concerned that these driving offences are becoming a major issue here and custodial sentences are being looked at in cases at least where there are aggravating circumstances.

[5] There have been seven cases of this type in the fortnight that I have been sitting. The Court of Appeal in *R v Boyle*<sup>1</sup> noted that the Court must become increasingly concerned and that will translate to penalties for this offending.

[6] In *Boyle*, the Court of Appeal noted there was a range of circumstances which did give rise to these types of offences. From quite low end inadvertence (mid low end is where this offence sits) to more serious offending which involves alcohol or speed or just downright silly driving.

[7] In *Reichardt*<sup>2</sup> which involved alcohol, a term of imprisonment of 6 months was imposed as well as reparation. Mr Reichardt was disqualified from holding or obtaining a drivers licence for two years. In *R v Bartley*<sup>3</sup> which the Crown referred to, the injuries to the victim were serious. This was as a result of a collision following a U-turn by the offender. It was a case of inadvertence. In that case the offender made a voluntary payment to the victim of \$10,000. A fine of \$750 was imposed as well as disqualification of 12 months.

[8] Mr Boyle's case was one of inadvertence as well. Driving along at night, he turned into his driveway. He did not see a motorbike coming along the other way. The motorcycle crashed into him and the motorcyclist was quite seriously hurt. Mr Boyle was sentenced to 12 months probation with 3 months on community service. He was also fined and ordered to pay reparation of \$5,000 and compensation for emotional harm of \$2,000. He was disqualified for 9 months.

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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 Kevin Reichardt*, CR 257/17, 26 July 2017, Doherty J

<sup>3</sup> *Police v Katrina Bartley*, CR 463/2015, 11 March 2016, Potter J

[9] Mr Rasmussen indicated in this case reparation is not at issue. The damage was done to your own vehicle. He also submitted this was a first offence which is something I must take into account. You also entered an early guilty plea. You have shown significant remorse. He also pointed out that there were no seriously aggravating factors. Although being too tired to drive is an aggravating factor in itself. Mr Rasmussen accepted that driving while tired needed to be something people need to be alert to. There may be similar effects to driving while under the influence of alcohol although that would be in a more serious category.

[10] Mr Rasmussen carefully outlined your personal position. You are clearly hard working, cooking food to sell at the market as well as holding down a day job. You deliver food at night, and sell it at the markets. You are a well-respected member of the Mormon church and a good father, husband and provider. No doubt the worst penalty has been the guilt you feel over your daughter's injuries in this incident. Mr Rasmussen also pointed out the importance of your licence for your job and for your food delivery business. Any term of community service would interfere unduly with your ability to attend the market and sell the food.

[11] The Crown pointed out the principles of sentencing. These include accountability, deterrence, denouncing the offending and sending a message to the community that this standard of driving is not acceptable. The Crown also pointed out that I must consider the least restrictive penalty in the circumstances. The Crown also noted that you need your licence for your job.

[12] Nevertheless, it was careless driving. The elements were present. Being tired does not excuse this sort of incident. I do accept that this offending does not call for imprisonment. It is a first offence, you pleaded guilty early. It was at the lower end of the spectrum in terms of carelessness. Nevertheless, I must send a message that this type of offending must stop.

[13] The Crown pointed me to a number of similar cases such as *Akaapa*<sup>4</sup> where Justice Williams indicated that a term of imprisonment would be considered in these cases and *Bartley* where a non-custodial sentence was imposed.

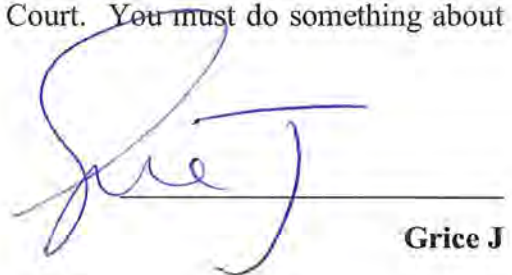
[14] At the end of the day I have to stand back and take all the factors into account including the gravity of the offence and the aggravating factors (and I note there was no alcohol or speed involved). Also, your personal circumstances which include the need to have a drivers licence so you can continue to care for your family and also the need to be able to work at the market on a Saturday morning.

[15] Therefore, I impose:

- a) a period of 12 months probation;
- b) order payment of a fine of \$1,500;
- c) order a payment of \$170 for medical costs payable to the police; and
- d) payment of \$50 Court costs.

[16] I am not going to impose a term of disqualification which would see you losing your job. That would be out of all proportion to the offending given your personal circumstances.

[17] I hope this is the last time you are before this Court. You must do something about the tiredness.



Grice J

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<sup>4</sup> *Police v Akaapa*, CRN 380/12, 29 June 2012, Hugh Williams J