Dangerous Driving Defences

Section 117 Road Transport Act (NSW) 2013

Many lawyers seem to take the view that it is impossible to contest a dangerous driving charge. They advise their clients to plead guilty without even analysing the case and seem unaware of the available defences. This article seeks to assist practitioners appearing in the Local Court of NSW by explaining the process of a hearing for dangerous driving.

No Reasoning Backwards

The court is concerned with the risk of harm arising from the manner of driving. It is the manner of driving that is the offence, rather than the result of the driving. It is impermissible to reason backwards and say that because there was a collision, the driving must have been dangerous or negligent. The court does not take into account the fact that there was an impact or the result of the impact.[1]

A person can drive dangerously but by pure good fortune, or the skill of another driver, avoid any impact with another vehicle. On the other hand, a driver may collide with another vehicle as the result of some unavoidable and exceptional incident even though the person is driving with proper care and attention.

Driving in a dangerous manner is a breach of the criminal law whether or not it results in any impact because of the real risk of harm that it creates.

The Test is Objective

The police do not have to establish that the accused subjectively knew or realised that he was driving the vehicle in a dangerous manner. His conduct must be judged according to an objective community standard which applies to all drivers of vehicles. That standard does not take into account any personal characteristics of the driver, for example, his or her experience or inexperience as a driver. A person can be driving dangerously even though that person believes that he or she is doing his or her best to avoid a collision.[2]

Factors Determining ‘Dangerous'

In considering whether the manner of driving is negligent, reckless or furious, the court is required to have regard to all the circumstances of the case, including: [3]

> *(a) the nature, condition and use of the road on which the offence is alleged to have been committed,*
> *(b) the amount of traffic that actually is at the time, or which might reasonably be expected to be, on the road,*
> *c) any obstructions or hazards on the road (including, for example, broken down or crashed vehicles, fallen loads and accident or emergency scenes).*

---

1 Suggested jury direction for Dangerous Driving - Criminal Trials Bench Book [5-260]
2 Ibid.
3 s117(3) Road Transport Act (NSW) 2013

This means the accused can and should give evidence of all the mitigating circumstances of the incident including:

- The time of day, the weather and the road condition,
- That he was driving a familiar route in a familiar, well maintained car,
- That he was unaware of any mechanical defect
- That he exercised proper care and attention,
- That he was not speeding or driving aggressively,
- That he was not impaired by drugs or alcohol or fatigue,
- That he was not fleeing a crime or street racing,
- Rather, that there was an 'unavoidable and exceptional incident',
- That he did his best to avoid a collision, but
- Accidents can still happen no matter what precautions we take, and
- It can happen to anyone, including police and members of the judiciary.

Sample Submissions

After this evidence is taken, the submissions would go something like this:

> *The police carry the burden of proving every element of negligent driving beyond a reasonable doubt. This burden is never shifted to the Accused. Yet, the police are doing just that. They ask YH to infer that because there was a collision, the driver must have been negligent unless he can prove himself to be innocent. In my submission, this is an impermissible line of reasoning. The maxim 'Res Ipsa Loquitur' has no application in criminal law.*[4]
>
> *The issue before the court is whether the Accused's manner of driving was so objectively dangerous that it amounts to 'negligent / reckless / furious'. The police carry the burden of proving this with admissible evidence to the criminal standard.*
>
> *In response to the police's circumstantial evidence, the Accused gave direct evidence. His evidence was clear, concise and credible – that he was driving responsibly when an [animal / child / intoxicated adult] walked onto the road in front of him and he had to swerve to avoid hitting it. In so doing, he caused his car to collide with the car next to him. Such an event could happen to any of us - no matter how careful we are.*
>
> *If the court accepts the accused's version is possible then it follows that the court must have a doubt regarding the police case. If the court has a reasonable doubt, then the police have failed to prove their case beyond reasonable doubt and the accused is entitled to an acquittal.*

I am available every day should you need further assistance.

Chris Nowlan
Barrister-at-Law
(02) 8251 0066
chris@chrisnowlan.com

4 Ex parte Musgrove; re Howard (1961) 78 WN(NSW) 88, per Collins J at 89