

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Indictment No: J12129235
Court Ref: CR-19-00134

THE DIRECTOR OF PUBLIC PROSECUTIONS

v

MICHAEL PANAYIDES

Outline of Plea Submissions

CHRONOLOGY

	Accused born- parents [REDACTED]) separated prior to his birth. Sister [REDACTED].
1997	Accused starts primary school- [REDACTED] Accused has contact with father for first time over period of 2 to 3 weeks
1999	Accused's mother starts relationship with [REDACTED]
2000	Accused's brother [REDACTED] born
2001	Accused moves to [REDACTED] Accused's brother Peter born
2002	Accused moves to [REDACTED]
2003	Accused has contact with father for second time over period of 6 to 8 months
2004	Accused starts secondary school- [REDACTED] Accused remanded at [REDACTED] for first time. Accused transfers to [REDACTED]
2006	Accused again remanded at [REDACTED] Accused attends [REDACTED] for brief period
January 2010	Accused remanded in custody

5 August 2010	Accused sentenced to 5 years with non-parole period of 3 ½ years for armed robberies
Mid 2013	Accused released from custody
2 October 2013	Accused sentenced to 4 months imprisonment at Heidelberg Magistrates' Court
6 January 2015	Accused sentenced to 2 months imprisonment at Heidelberg Magistrates' Court
May 2015	Accused remanded in custody
3 August 2015	Accused sentenced to 70 days (time served) and a CCO at Melbourne Magistrates' Court
November 2016	Accused remanded in custody
30 March 2017	Accused sentenced to 12 months imprisonment without a non-parole period at Melbourne Magistrates' Court
November 2017	Accused released from custody
12 August 2018	Current offences committed
13 August 2018	Accused arrested and remanded in custody
27 November 2018	Accused makes plea offer in terms very similar to plea indictment (the only difference was the proceeds of crime charge)
4 December 2018	Committal mention. Adjourned for further committal mention
23 January 2019	Further committal mention. Accused pleaded guilty.
24 January 2019	Initial directions hearing. Adjourned for contested plea 29 July 2019.
1 July 2019	Plea date vacated. Adjourned for contested plea 6 November 2019.

Personal History

Family Constellation

1. The Accused's parents are [REDACTED]. He has a sister, [REDACTED] who is five years older and lives with her partner and four children. The Accused's parents separated before he was born. The Accused has no relationship with his father and has had contact with him for only two periods in his life, being a period of two to three weeks when he was

around six years old and a period of six to eight months when he was about 12 years old. The Accused was close to his maternal grandparents and lived in their home for a period when a child, before they passed away in 2008 and 2011.

Education

2. The Accused attended a number of primary schools due to his family moving homes. He was taught for a term at the [REDACTED] while a patient of the Child and Adolescent Mental Health Service, to which he had been referred during primary school. His secondary schooling was brief and was interrupted by truancy and his being remanded for periods at [REDACTED]. He attempted but did not complete year nine.

Employment

3. The Accused has been employed irregularly over his life, having worked in fast food restaurants, plastering and a pillow factory. His longest period of employment was eight months, when working for his mother's partner in his plastering business. Prior to remand on this matter he had worked sporadically for a business erecting signage in the CBD and inner city.

Relationships

4. The Accused has had three significant relationships, two of approximately one year duration when 16 and 18 [REDACTED] and the last with [REDACTED] from 2015 until early 2018.

Drug and Alcohol

5. The Accused has been a long-term user of illicit drugs, most particularly heroin. He started using cannabis in his early teens before moving to heroin when around 15 years old. He has managed brief periods of abstinence when in the community since, the most recent being a period of approximately four months in 2015/2016.

Mental Health

6. The Accused has been assessed by Patrick Newton and a report is pending.

Criminal History

7. The Accused has a relevant criminal history that began when a young teen. Notably he has no history of offending that relates to the manner of driving, such as careless or dangerous driving, recklessly endangerment or pursuits. When he was 13 years old he was twice

sentenced in the Childrens Court for unlicensed driving which both related to riding a dirtbike in a paddock.

Submissions Relating to Offending

Earlier Driving

8. With respect to those parts of the Summary of Prosecution Plea Opening relating to the Accused's driving in the CBD the Accused submits that the CCTV does not support the Prosecution's allegations of near misses with trams in paragraphs four and five. There is no doubt that the Accused drives in areas closed to the public and otherwise breaks road rules, such as driving through red lights. It is submitted that the CCTV shows that the Accused brakes as he approaches the intersection of Bourke and Swanston Streets and then pauses while the tram passes. He then drives slowly south on Swanston Street behind a tram. It is submitted that the description of near misses with trams is inaccurate.
9. Similarly, it is submitted that the description of his driving in paragraph six is inaccurate. The CCTV shows the Accused driving east on Toorak Road in the left lane and passing a dark SUV that is waiting to come out of a side street. He then moves from the left lane into the centre lane and continues east on Toorak Road. The CCTV does not show him "veer(ing) in and out of the marked lane" or "nearly colliding with a dark SUV coming out of a side street".

Collision

10. The Accused accepts by his plea that he drove in a manner that was culpable, in that he failed unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances, and that his driving caused the death of Ms Scheenhauer.
11. The Accused accepts that the description of the actual collision in paragraph 10 is accurate and notes that the expert opinion is that at the point of impact with Ms Scheenhauer and then the parked blue Mercedes GLE350 the Accused's vehicle was sliding on its passenger side and the impact was with its roof and bonnet.
12. The Accused denies that he was aware either prior to collision or immediately afterwards that Ms Scheenhauer had been involved in the accident and denies seeing her or her bicycle as asserted in paragraph 13.

13. The Accused accepts by his plea to charge four that he failed to render assistance to Ms Scheenhouwer and that he ought reasonably to have known that the accident had occurred and had resulted in a person being killed or suffering serious injury.

Record of Interview

14. With respect to the summary of the Accused's interview in paragraph 24 it is contended that the Accused did not say that he believed he had knocked a lever that caused the acceleration but offered it as a possibility (questions 145 to 158, 289 to 302). The Accused also did not say that he had used heroin and methamphetamine intravenously on the night prior to the collision. The Accused made reference to his being a heroin user (q115-127) but did not say when prior to the collision he had last used heroin. The Accused made no reference to methamphetamine.

Sentencing Factors

Standard Sentencing Scheme

15. The Accused agrees with the Prosecution submissions relating to the Standard Sentencing Scheme contained with paragraphs 35 to 45.

Offence Gravity

16. With respect to the existence of any personal circumstances of the Accused which affects the objective gravity of the offending (as discussed at paragraph 47) the report of Patrick Newton has not yet been received.
17. With respect to the five factors identified by the Crown in paragraph 48 the Accused submits that it cannot be established beyond reasonable doubt that the Accused was drug-affected to the point that his capacity to drive was relevantly affected. It is noted that the indictment alleges negligence and not that the Accused was so affected by drugs as to be incapable of having proper control of the vehicle.
18. The Accused accepts the Crown's submission that the offending is not low-level offending.

Mitigating Factors

19. Co-operation and admissions

- a. The Accused made a number of significant admissions when interviewed and was co-operative with police.

20. Plea of guilty.

- a. It is submitted that the Accused's plea should be considered a plea at the earliest reasonable opportunity.

21. Lack of directly relevant priors

- a. The Accused does not have a history of driving dangerously or carelessly, endangering others by his driving or of speeding.

Disposition sought

- 22. It is conceded that a sentence imposing a head sentence and non-parole period must be imposed.

Pre-sentence Detention

- 23. The Accused was arrested on 13 August 2018 and has remained in custody. As at 6 November the Accused will have served 450 days of pre-sentence detention.

Rohan Lawrence

Counsel for the Accused