



AUSTRALIAN ADVOCACY INSTITUTE

DPP v TREVOR HAYDEN

PLEA

(In the County/District Court)

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PROSECUTION OPENING ON THE PLEA

Introduction

The accused **Trevor HAYDEN** has pleaded guilty to an indictment in the County/District Court containing :

1. failing to stop after an accident where a person is killed or seriously injured
2. failing to assist after an accident where a person is killed or seriously injured
3. careless driving

Circumstances of the offending

On Thursday the 5th of July, (last year), at about 7.30 p.m. a hit run, vehicle and pedestrian collision, occurred on Mt. Derrimut Road, Deer Park approximately 50 metres north of Foleys Road.

The collision occurred when the driver of a blue coloured Holden VT Commodore sedan, Trevor HAYDEN, travelling north, struck a highly intoxicated pedestrian, 44 year old Stephen ELLIOT, walking on Mt. Derrimut Road.

The area

At the time of the offence, it was dark and there was limited street lighting available. An 80 km/h speed limit is applicable to this length of road. Road works activities (signs etc.) were evident approximately 1 kilometre south of the crime scene. No road works signs were located closer than this to the crime scene.

The Deceased

Stephen ELLIOT was married to with two teenage children. He worked as a Landscape Gardener.

ELLIOT was struck heavily at the - front - left of centre of the vehicle. This caused damage to the lower front bumper skirt, left side driving light housing, front bumper, front left indicator, left headlight and front left quarter panel. ELLIOT struck and slid along the bonnet onto the windscreen distorting the left side windscreen wiper before striking and fracturing the windscreen to the top left side corner and then moving along the left side of the vehicle where the passenger side mirror was broken off.

ELLIOT sustained multiple injuries, including a fractured spine, fractured ribs, fractured lower left leg, fractured pelvis as well as internal injuries. His cause of death was shown to be chest injuries sustained in a motor vehicle collision. His Blood Alcohol Concentration was found to be 0.29g/100ml.

At that time he was struck, ELLIOT was wearing a dark coloured long sleeved jumper over a white long sleeved shirt with a dark coloured tie, black trousers and shoes with dark coloured socks. He was walking home from a funeral. He was observed by other drivers that night as 'wandering all over the road'.

ELLIOT was thrown off to the left of the vehicle and landed approximately 2 metres off the bitumen edge of the road. HAYDEN failed to stop and render assistance to ELLIOT. The body of ELLIOT was not found until about 5.10 a.m. the next morning.

The medical evidence is that the deceased was killed upon impact.

The Accused

Trevor HAYDEN was 29 years of age at the time of this collision. He was employed by Abattoir - Tasman Meats in Brooklyn as a Beef Slaughterman. He is a resident of Albanvale and lives with his de facto partner. He holds a full motor car licence issued in the State of Victoria. He has prior convictions for careless driving, speeding and failing to stop and exchange name and address when property was damaged. In January, 3 years ago, he had a minor accident with a stationary car. An hour later he drove his car into a pole. He was found by police, 2 hours later, in a garden by the scene of the second collision. He was admitted shortly after to a psychiatric hospital. He was sentenced in August 2 years ago to a 12-month treatment-only CBO, which has now been completed.

HAYDEN worked, on a casual basis, at 'Tasman Meats' an abattoir in Brooklyn. On Thursday the 5th of July, according to company pay sheet records, HADE commenced work at 5.30 a.m. and finished at 3.15 p.m.

HAYDEN owned a blue coloured 1998 Holden VT Commodore sedan registered number – GRO 426. According to HAYDEN's wife, he arrived home at around 6.00 p.m. and left again at around 6.30 p.m. to visit a 'mate' in Werribee. He left in his Holden Commodore. HAYDEN admitted to smoking cannabis sometime during the day of the collision.

The collision

Drivers who also saw the deceased that evening on the road, also report seeing the accused's car. Elizabeth PRAPAS became aware of a male pedestrian walking on the road in her lane. She drove around the male and continued north until the rail crossing near Tilburn Road. She started to slow, as the lights turned to amber, intending to stop prior to the railway line. She then observed a dark coloured Holden Commodore overtaking her on her left travelling at what she states was, *"..... fairly fast without being excessive, but too fast considering he was approaching the train lines and the amber light."*

The backyard of Michael TAN's house abuts Mt Derrimut Road and is approximately 80-100 metres north of Foleys Road. He detailed that on the evening of the collision, at around 7.00 p.m., he went upstairs to sleep before starting nightshift at 11.00 p.m. Whilst unaware of the time, he heard a loud distinctive crunching noise on Mt Derrimut Road very close to Foleys Road. He had no doubt that the crunching noise was a car hitting something of a reasonable size. He then heard a car pull over onto the gravel part of the road, stop and then speed off.

As HAYDEN was returning from Werribee he contacted his wife to ask what she wanted for dinner as he was going to McDonalds. This call was made at 7.13 p.m. and lasted 2 and a half minutes. At 7.29 p.m. HAYDEN called his de facto again, mobile to mobile. In a statement later provided to police his wife stated that when HAYDEN called, he seemed really confused and said something like, *"I think I've hit something." "I think I've hit something, like a pole or something."*

After HAYDEN arrived home, he contacted his brother Dwaine at home. HAYDEN called his brother four times between 8.25 p.m. and 9.27 p.m. They spoke for about 35 minutes in total. In a statement provided to police, Dwaine stated that HAYDEN told him that he had hit something in his car. *"He told me that he hit something in his car."* HAYDEN told his brother he heard a bang but didn't know what he hit and that he had a broken windscreen on the passenger side and broken headlight." Dwaine told him to return to the scene.

On Friday the 6th of July at 4.33 a.m. HAYDEN contacted James SPENCER, a co worker at the abattoir. HADE requested a lift from SPENCER who states, "... .. He said his clutch was slipping."

Police investigation, arrest and Interview

Police attended the scene

Police attended the scene. The debris suggested that the vehicle involved in the collision was thought to have been a Holden Commodore VT model, manufactured to April 1998.

Located approximately 200 metres north of the collision scene were a set of tyre acceleration scuff marks on the left side bitumen shoulder.

Sergeant BELLION also concluded that speed estimates, of the vehicle involved in the collision, based on the distance from the start of the debris field to the centre of the major debris field, indicated a speed range of 99 km/h to 108 km/h in the 80 km/h speed zone.

At about 10.13 p.m. on Friday 6th of July, 24 hours after the collision, HAYDEN attended at the Keilor Downs Police Station where he had a conversation with Leading Senior Constable Mark JARSKI at the front counter.

He said, "Hi. I saw that there was a bad accident on the news, last night on Mt Derrimut Road. I was driving on that road last night and hit something."

JARSKI said, "What time was it?"

He said, "About 8:00 p.m."

JARSKI said, "Did you see what you hit?"

He said, "No. I panicked and drove home. I then checked my car and saw that there was some damage to the front left guard, windscreen and the left hand side mirror, was missing."

JARSKI had been unaware of the fatal collision when approached by HAYDEN, though the matter was even at that early stage attracting media attention. JARSKI consequently made local enquires and then contacted the Major Collision Investigation Unit. As a result of those enquires, HAYDEN was arrested. He was subsequently interviewed by the Major Collision Investigation Unit. He gave a selective answer interview which, for the majority, was no comment. He admitted the following:

- (a) That he is the registered owner of a blue coloured Holden Commodore bearing Victorian registration RYG 107.
- (b) That the vehicle was presently in the carport at his residence at 11 Entally Drive. Albanvale
- (c) That he is the only person who drives the car.
- (d) He had smoked 1 cannabis cigarette earlier that day

**Signed
Crown Prosecutor**

MEMO to counsel
Summary of matters personal to the accused

1. Trevor Hayden is 34 years of age. With his partner Kate he has one child, a 4 year-old son who is legally blind. He has a 10 year-old daughter from a relationship in his early twenties.
2. His step-father was an abusive, violent alcoholic. He is the only sibling to have held long-term employment. He left home at 14.
3. He has dyslexia, which led to significant difficulties at school, which he left during his second attempt at year 10 (though he has improved his very basic reading and writing skills in recent times, in order to read to his son).
4. He was employed full-time as a farmhand from his mid- until his late-teens, and worked in abattoirs from then until the accident. He lost his job as a result of publicity given to the accident, and has struggled since. However, last week, his boss has promised to give him a full time job that is now available.
5. In the months preceding the offence, his son Joshua was diagnosed with a number of conditions:
 - (a) Multiple food allergies (initially reflux) meant that he vomited after every feed
 - (b) He is legally blind : and
 - (c) He has severe behavioural difficulties, and sleeping difficulties.
6. Trevor will admit his prior convictions. There is one subsequent speeding fine.
7. During one separation from his partner, on 31 January, 3 years ago, he had a minor accident with a stationary car. An hour later he drove his car into a pole. He was found by police, 2 hours later, in a garden by the scene of the second collision, in a disoriented state. He was admitted shortly after to a psychiatric hospital. In August 2 years ago he was sentenced shortly afterwards to a 12-month treatment-only CBO, which has now been successfully completed.
8. Trevor Hayden's treating psychiatrist, Dr. Endelman reports the following:
 - (a) He is suffering "very significant, serious and to some extent treatment-resistant symptoms of depression and anxiety";
 - (b) That is a result of these proceedings and his son's conditions, superimposed upon predisposing factors such as childhood abuse;
 - (c) The long-drawn out legal process has impeded treatment;
 - (d) Incarceration would be particularly damaging to his illness, possibly resulting in further suicide attempts.

Instructions

Prepare and present a plea in mitigation for the Accused.

Consider the following:

- What are the statutory penalties for these offences?
- What is the real criminality that requires punishment?
- What is the level of culpability here?
- What is the case theory on which the plea will be based?
- What kinds of sentence are available and within range?

- What are the purposes of sentencing for offences of this kind?
- What are the principles emerging from recent cases on this topic?
- What is the value of the plea of guilty in these circumstances?
- What is the significance of the Accused's mental state?
- What hardship is relevant based on his and his family's circumstances?

- What may be the appropriate orders against his licence, for a forensic sample, for compensation, or other orders?