GILSHENAN & LUTON
LEGAL PRACTICE



Criminal charges for dangerous driving causing death

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Where a person's driving causes the death of another, even unintentionally, the driver can be charged criminally and prosecuted. There are a number of traffic related charges for driving offences causing death, with the most commonly charged offence being 'dangerous operation of a motor vehicle causing death'.

There is a variety of colloquial terms used when people are referencing the charge of 'dangerous operation of a motor vehicle causing death'. These include:

- Dangerous driving causing death;
- Negligent driving causing death;
- Reckless driving causing death;
- Driving without due care causing death; and
- Culpable driving causing death;

However, other offences do exist in Queensland, so when confronted with a tragic traffic accident, police need to consider several factors prior to charging a driver, including the circumstances of the accident, and the manner of the driving.

The three main driving offences arising in this context are discussed below.

Manslaughter (in a dangerous driving context)

Pursuant to s303 of the *Criminal Code* 'a person who unlawfully kills another under such circumstances as not to constitute murder is guilty of manslaughter.'

A person is deemed to have killed another if they *cause* the death directly or indirectly, and where doing so was unlawful (in the sense that it was not authorised, justified, or excused by law).

A death is ‘caused’ if the person’s act (that is, the driver’s act) is a substantial or significant cause of death, or where it substantially contributed to the death. Even where the person’s act (initially) results in an injury, and the victim later dies, the person can be held responsible for the death.

Importantly, an *intention* to kill or do harm is not an element of the offence of manslaughter. It is for that reason, that in fatal traffic accidents, police can charge a person with manslaughter.

Having said that, charging a person with manslaughter following a traffic accident is usually reserved for only the most serious of cases. Some examples include:

- *R v Kelly* [1999] QCA 296: *Kelly* unlawfully used a van whilst intoxicated. He drove it on the wrong side of the road at speeds of up to 130 kph, and while the subject of a police pursuit. He had a head-on collision with another road-user.
- *R v Clark* [2009] QCA 361: *Clark* mounted a footpath to overtake another driver. In doing so, she killed two teenagers. She was not licensed and had taken prescription drugs and consumed alcohol prior to driving.
- *R v Derks* [2011] QCA 295: *Derks* drove a stolen car in excess of 140 kph on the Bruce Highway in the wrong direction, while police tried to intercept him. He hit another car head-on.
- *R v Glenbar* [2013] QCA 353: *Glenbar* drove whilst under the influence of alcohol and at high speed – refusing to stop for police. He failed to negotiate a bend in the road, and struck (and killed) two pedestrians.

Penalty for manslaughter

Manslaughter carries a maximum penalty of life imprisonment. In the above cases, the drivers were sentenced to terms of imprisonment of between eight and eleven years.

Interestingly, where a person is tried for an offence of manslaughter (in circumstances involving a traffic accident death), the jury can acquit on the manslaughter charge, but find the person guilty of dangerous operation of a vehicle causing death.

Dangerous operation of a vehicle causing death

Section 328A of the *Criminal Code* makes it a criminal offence to operate a vehicle dangerously.

Operating a vehicle dangerously means operating a vehicle ‘at a speed or in a way that is dangerous to the public having regard to all the circumstances’. The circumstances include:

- the nature, condition and use of the place; and
- the nature and condition of the vehicle; and

- the number of persons, vehicles or other objects that are, or might reasonably be expected to be, in the place; and
- the concentration of alcohol in the operator's blood; and
- the presence of any other substance in the operator's body.

Dangerous operation of a vehicle can be charged when there exists a situation which, when viewed objectively (and in light of what might be expected of a competent and careful driver), was 'dangerous'. 'Dangerous' or 'dangerously' is said to be given its ordinary meaning – that is, 'fraught with or causing danger; involving risk; perilous; hazardous; unsafe'.

Some examples of driving which has been held to be dangerous include:

- Rear-ending another vehicle at high speed;
- Travelling through a red light;
- Failing to stop at a 'stop' sign; and
- 'Hooning'.

Like manslaughter, the dangerous driving does not need to be the sole cause of the death. It is sufficient for it to have been a substantial or significant cause.

However, the court has made it clear that in most circumstances, the appropriate charge for deaths arising out of traffic accidents is dangerous operation. For instance, in *R v Wooler* [1971] QWN 10, it was said:

"*It would seem that this offence is not intended to be used as an alternative and second charge to manslaughter, but is intended to be used as a substitute for it, and that charges of manslaughter arising from the driving of a motor-vehicle should now be preferred only in the* ***most serious cases where the offence approximates to murder*** (emphasis added)*, e.g. where a policeman is knocked down by the reckless driving of a stolen car.*

Penalty for dangerous operation of a vehicle causing death

Dangerous operation of a vehicle causing death carries a maximum penalty of 10 years' imprisonment (in some instances it can be increased to 14 years).

In examining sentencing outcomes for dangerous operation of a vehicle causing death between 2005 and 2017, the Queensland Sentencing Advisory Council reported that of the 363 offenders who were sentenced:

- 5% were adversely affected by alcohol/drugs;
- 8% had no criminal history;
- The average age of the offenders was 32; and

- 4% received a custodial sentence – the average term of imprisonment being 5.2 years.

Careless driving causing death

Section 83 of the *Transport Operations (Road Use Management) Act 1995 creates the offence 'driving without due care and attention or without reasonable consideration of other persons using the road or place'. This charge is often referred to as 'careless driving'.*

A few years ago, the legislation was amended to allow a person to be charged with careless driving causing death ('aggravated careless driving'). Examples of aggravated careless driving which have come before the courts have included:

- Turning into the path of an oncoming vehicle; and
- Performing a U-turn without giving way.

In determining a careless drive charge, aggravated or not, the question for the court is:

'Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances?'

Importantly, and like dangerous operation of a vehicle, the manner of driving must be viewed objectively.

Penalty for careless driving causing death

Regarding penalties, if a person charged with this offence has a valid licence, the maximum penalty is either a fine of 80 penalty units, or one year's imprisonment. The penalty doubles where the person was unlicenced.

A conviction for this offence also attracts a six month minimum licence disqualification.

In *De Silva v Commissioner of Police* [2020] QDC 241, it was said that the following factors are to be considered by the court when sentencing for this offence:

1. The nature of the defendant's driving;
2. Whether the deceased contributed in any way to the collision;
3. The defendant's antecedents (including any criminal history);
4. The impact of the offending on the family of the deceased; and
5. Matters in mitigation in favour of the defendant.

Aggravated careless driving is the least serious of charges within this category of offending. Unlike manslaughter and dangerous operation, it can be finalised in the Magistrates Court.

Conclusion

The cases reveal that in a traffic accident, the resultant death is not the determinative factor (when it comes to the driver being charged criminally). The overall criminality must be considered, with the following matters in mind:

- The manner of the driving (including whether the driving was reckless, careless, or dangerous);
- Aggravating features such as intoxication and speed;
- The driver's traffic and criminal histories – including whether the driver was unlicensed at the time or subject to any court orders; and
- Any callous disregard of the victims at the scene of the accident.

If you have been involved in a serious motor vehicle accident and/or you have been charged with a driving offence, we strongly recommend that you obtain legal advice early from an experienced criminal lawyer.

Gilshenan &Luton has extensive experience defending charges of manslaughter, dangerous operation of a vehicle, and careless driving.

Contacting a Gilshenan &Luton criminal lawyer

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