

DIRECTOR OF PUBLIC PROSECUTIONS

v

ROBERT MICHAEL LEES

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JUDGE: HIS HONOUR JUDGE WRAIGHT  
WHERE HELD: Melbourne  
DATE OF HEARING: 1 April 2020  
DATE OF SENTENCE: 6 April 2020  
CASE MAY BE CITED AS: DPP v Lees  
MEDIUM NEUTRAL CITATION: [2020] VCC 375

**REASONS FOR SENTENCE**

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Subject: CRIMINAL LAW  
Catchwords: Plea of guilty – One charge of burglary – Three charges of theft – Two charges of negligently causing serious injury – One charge of failing to render assistance – Related summary charge of unlicensed driving – Extensive prior criminal history – Offender’s stolen vehicle collided with a bus shelter where the two victims were seated – Offender ran from the scene without making any attempt to render assistance – Both victims sustained extremely serious life threatening injuries – Serious examples of negligently causing serious injury.

Legislation Cited: *Crimes Act 1958, Road Safety Act 1986, Sentencing Act 1991.*

Cases Cited: *Harrison & Rigogiannis v The Queen* (2015) 49 VR 619, *Gorladdencharau v The Queen* [2011] VSCA 432, *DPP v Weybury* [2018] VSCA 120.

Sentence: Total effective sentence of 7 years and 6 months imprisonment, with a non-parole period of 5 years and 6 months imprisonment.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Ms D Piekusis QC	Office of Public Prosecutions
For the Accused	Mr J Anderson	Stary Norton Halphen

HIS HONOUR:

### **Introduction**

- 1 Robert Michael Lees, you have pleaded guilty to the following charges:
  - One charge of burglary contrary to s 76(1) of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment (Charge 1);
  - Three charges of theft contrary to s 74 of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment on each charge (Charges 2, 3, and 4);
  - Two charges of negligently causing serious injury contrary to s 24 of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment on each charge (Charges 5 and 6); and
  - One charge of failing to render assistance contrary to s 61(3) of the *Road Safety Act* 1986, which carries a maximum penalty of 10 years imprisonment (Charge 7).
- 2 You have also pleaded guilty to one related summary charge, unlicensed driving, contrary to s 18(1)(a) of the *Road Safety Act* 1986, which carries a maximum penalty of 6 months imprisonment or 60 penalty units.
- 3 You have also admitted your prior Criminal Record.

### **Circumstances of the offending**

- 4 A prosecution opening was tendered on the plea and may be summarised as follows:
- 5 On 31 January 2019, between 4:48am and 4.58am, you stole a 1994 Green Honda Accord from the secure car parking area of a residential apartment building situated in Canterbury Road, Forest Hill. You forced entry to the locked foyer door, and then accessed the underground car park via the

elevator in the foyer. The vehicle was reported stolen that day. It is these facts that relate to Charge 1, burglary and Charge 2, theft.

- 6 On 1 February 2019 between 8:15am and 4:45pm, you attended the Waverley Gardens Shopping Centre in Mulgrave and stole a Victorian motor vehicle number plate, ZPS 641, from a vehicle parked in the car park. You then stole a further two Victorian motor vehicle plates, YUT 287, from a vehicle parked in the Stud Park Shopping Centre in Rowville. It is these facts that relate to Charges 3 and 4, theft.
- 7 On 2 February 2019, at approximately 11:07am, you were driving the stolen green Honda Accord in the north bound lanes along Clayton Road, Clayton South. At the time of the collision, Clayton Road, Clayton South was a four lane, bitumen road tending approximately north to south comprising of two lanes of traffic in each direction and divided by a continuous white line painted down the approximate centre of the road. The road was bordered by a formed concrete gutter tending to a grass nature strip and footpath on either side. Each lane was approximately 3.1 meters wide. The area was a residential street with a posted speed limit of 60km/h.
- 8 At the same time, the two victims in this matter Jaideep Mandhan and Stathoula Katsambanis were waiting in a bus shelter which was located on the eastern side of the road approximately 25.6 metres north of Byron Street. There are no safety barriers between the road and the bench seat.
- 9 Jaideep Mandhan was 20 years old at the time. He was an Indian National on a Student visa while studying in Australia. Mr Mandhan worked part time to support himself while studying. His immediate family lived in India. He was seated in the bus shelter, awaiting a public bus to attend work.
- 10 Stathoula Katsambanis was 17 years old at the time. She was a year 12 student and worked part time. She was seated in the bus shelter, awaiting a public bus to attend work.
- 11 You were in the far left lane when you were observed to veer into the southbound lanes of Clayton Road into the path of oncoming vehicles.

Witnesses estimated that you were travelling at 70-80km/h or 80-90km/h at this stage. You were steering or angling across the lanes and were looking down towards your lap. You were observed to lift your head and turn the vehicle hard right.

- 12 You then collided with the bus shelter that was located on the eastern side of the road. At the time of colliding with the bus shelter, the two victims, Mr Mandhan and Ms Katsambanis were seated on the bench seat inside the bus shelter. Both victims were struck by the green Honda Accord you were driving. Your car then continued momentarily into a tree where it came to rest, 38.7 metres from Byron Street. You immediately exited the driver's seat of the vehicle, and heard to say 'shit shit'. You went to the boot of the vehicle and removed a bag before running in a northerly direction from the scene of the collision, without making any attempt to render assistance to the two victims. You did however, tell a witness to call an ambulance. It is these facts that relate to Charge 7, failing to render assistance.
- 13 A witness used her mobile phone to take a photograph of you as you fled the scene of the collision.
- 14 A passing motorist, Sean Willis, observed you running from the scene. He stopped his vehicle and followed you on foot while calling '000' and providing police with observations of you as you fled the scene. Mr Willis shouted at you to stop to which you responded 'my DNA is all over the car anyway', 'fuck off, stop following me' and 'I've got a knife'. Mr Willis followed you until you reached a factory located in Murdoch Street, Clayton South, at which time you scaled a fence and fled through the back of the property.
- 15 Mr Mandhan was admitted to the Alfred Hospital and was found to have sustained the following injuries which are described in greater detail in the prosecution opening and the medical reports:
  - Left posterior rib fractures to rib number 10 and 11, the latter displaced;
  - Left comminuted open humerus fracture;
  - Bilateral femur fractures;
  - Bilateral tibia and fibula open fractures;

- Extensive pelvic fractures with comminuted left sacral fractures, left posterior iliac fractures, right pubic rami fractures and disruption of the pubic symphysis;
- Left clavicle fracture;
- Bilateral patellar fracture;
- Right extra axial haematoma;
- Traumatic brain injury secondary to diffuse axonal injury;
- Left pneumothorax;
- Multiple lacerations of varying thickness;
- Right medial knee/leg soft tissue defect post multi-trauma; and
- Left posterior lower back haematoma.

16 Mr Mandhan remained an inpatient until 1 March 2019. He had sustained a very severe post traumatic amnesia with a duration of 48 days. He required many surgical interventions to reduce and stabilise various fractures and repair soft tissue injuries. He underwent a neurosurgical procedure to insert an external ventricular drain to allow drainage of cerebral spinal fluid from the brain to an external closed system and the insertion of a temporary device to allow the measurement and recording of intracranial pressure. His treatment was complicated by infection, deep vein thrombosis and post surgical pneumocephalus and he required intensive care admission, antibiotic and anticoagulant treatment.

17 After his discharge to a brain rehabilitation facility, Mr Mandhan was readmitted on 10 March 2019 for further surgery. He was discharged back to rehabilitation on 11 March 2019 and then ultimately went home in June 2019. He was followed up by plastic surgical, orthopaedic, neurosurgical, ophthalmology and head injury outpatient services.

18 Mr Mandhan's injuries were extremely serious life threatening injuries. The medical opinion is that it is highly likely Mr Mandhan will have sustained permanent changes including deformity, reduction in musculoskeletal function, reduced mobility, impaired cognitive functions, chronic pain and psychosocial effects. He reports double vision and fatigue. Changes in his

memory and executive function have been observed. Mr Mandhan will remain vulnerable to complications of traumatic brain injury such as fatigue, headaches, seizures and impaired social cognition into the future. It is these facts that relate to Charge 5, negligently causing serious injury.

19 Ms Katsambanis was admitted to the Alfred Hospital and sustained the following injuries which are described in greater detail in the prosecution opening and medical reports:

- Right 11<sup>th</sup> and 12<sup>th</sup> and left 9<sup>th</sup> and 11<sup>th</sup> rib fractures including dislocation of the right 11<sup>th</sup> rib head;
- T7 burst fracture with no retropulsion;
- Right L2-5 transverse process fractures;
- Extensive sacral and coccygeal fracture dislocation;
- Left proximal ulna open fracture;
- Right hand 3<sup>rd</sup> metacarpal open fracture;
- Left hand 2<sup>nd</sup> metacarpal fracture;
- Minimally displaced anterior column inferior end-plate fracture of C2;
- Grade 1V left renal injury visible on scan as a non-enhancing right kidney superior pole suspicious for infarct from dissected/thrombosed right superior pole renal artery branch;
- Pelvic fractures associated with presacral haematoma and injury to external anal sphincter and pelvic floor;
- Large right gluteal degloving injury; and
- Large left frontal and right parieto-occipital extracranial haematoma.

20 Ms Katsambanis remained an inpatient until late April and required many surgical interventions to reduce and stabilise some of her fractures and repair soft tissue injuries. She underwent an abdominal operation to create a colostomy which was a temporary measure. Ms Katsambanis required prolonged intensive care admission.

21 The injuries sustained by Ms Katsambanis were extremely serious life threatening injuries affecting many parts of the body. The medical opinion is that it is highly likely she will have sustained permanent changes including

deformity, reduction in musculoskeletal function, reduced mobility, chronic pain and psychosocial effects. It is these facts that relate to Charge 6, negligently causing serious injury.

- 22 On 2 February 2019, at approximately 4:20pm, police located you at the Emergency Department of the Monash Medical Centre after you presented at the hospital with chest injuries. You were immediately arrested. You were examined and admitted for treatment as medical staff identified that you had suffered internal injuries and glass fragments were lodged in your head. You remained under police guard while you were treated. You were later transferred to the Alfred Hospital in Melbourne where you remained for ongoing medical treatment until 15 February 2019.
- 23 Following discharge from hospital, you were taken into custody and interviewed in relation to the incident where you made a 'no comment' record of interview. You were then remanded in custody.
- 24 Collision Reconstructionist Detective Senior Constable Melanie Macfarlane, attended the collision scene on 2 February 2019 and conducted analysis of the material collected at the scene, determining the Honda Accord was travelling at a minimum of 46km/h when it impacted the tree. Detective Macfarlane stated that the speed was determined to be a minimum and does not include the speed lost due to the impact with the gutter, bus stop and the two pedestrians.
- 25 The Honda Accord was inspected and did not reveal any fault, failure or condition which could have caused or contributed to the collision.
- 26 At the time of the collision you were not the holder of a Victorian Driver Licence and you have never held a driver's licence in any State or Territory. It is these facts that relate to the related summary offence, Charge 6, unlicensed driving.

### **Nature and gravity of the offending**

27 In *Harrison & Rigogiannis v The Queen*<sup>1</sup> the Court reiterated that the offence of negligently causing serious injury by driving (NCSI) sits above dangerous driving causing serious injury and below dangerous driving causing death.

28 In *Gorladenchearau v The Queen*<sup>2</sup>, Maxwell P said:

Because the level of negligence required to be established for NCSI is the same as that for culpable driving causing death (where the head of culpability is negligence), the key difference between the two offences is whether the victim dies or is seriously injured.

29 Thus, as was also noted in *Gorladenchearau*, the determination of the objective gravity of the offending is assessed by a consideration of the degree of negligence together with the seriousness of the injury caused.<sup>3</sup>

30 Considering your conduct as a whole in relation the charges of NCSI, it is self-evident that the offending is very serious. You were driving a stolen car, you were unlicensed, you were exceeding the speed limit in a residential street, and in those circumstances, you lost control of the vehicle. On the evidence of observers, your head was down as you veered across the road before lifting your head, turning your car hard right and then colliding with the bus shelter. The estimation of your speed from lay witnesses ranges from 70 to 90km/h, however the expert evidence concluded that after striking the gutter, the bus stop and the two pedestrians, your car at that point was travelling at a minimum of 46km/h when it impacted the tree.

31 Mr Anderson who appeared on your behalf, sensibly conceded that the offending is serious and acknowledged the aggravating features including the fact that you were unlicensed (and have never held a licence), that you were driving a stolen vehicle and that both victims suffered extremely serious life threatening injuries.

32 Mr Anderson did however submit that when dividing the assessment of the seriousness into the two components of negligence and nature of the injury, he submitted that the negligence is not of a high order and placed it in the

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<sup>1</sup> (2015) 49 VR 619 at [2].

<sup>2</sup> [2011] VSCA 432 at [19].

<sup>3</sup> *Ibid* at [22].

'mid range'. The submission primary was based on a comparison of other cases where there are features such as high levels of alcohol or drugs, evidence of erratic driving or evidence of very high speed.

- 33 The particulars of negligence that are relied on by the prosecution are the speed of your vehicle prior to the collision, the fact that you crossed onto the wrong side of the road resulting in collision with the bus stop and the fact that you were unlicensed. It is also relevant that for unknown reasons, you had your head down, clearly not looking at where you were going.
- 34 The assessment however does not end there. The injuries to the two victims is a very important component of the overall assessment of the seriousness of the offending.
- 35 Further, as the Court of Appeal has said, classifications in terms such as 'mid range' carries a risk that it will attract reference to current sentencing practices for offences previously categorised in a particular range thus bringing the risk of limiting the instinctive synthesis.<sup>4</sup>
- 36 In all the circumstances while I do not think that your offending is in the worse possible category, it is in my view, a very serious example of NCSI in relation to both charges.
- 37 While the NCSI offences were complete once you hit the tree, your offending conduct did not stop there. You got out of the car and left the scene failing to offer assistance to the victims. However your fleeing was not an immediate response. You clearly thought about your actions as you first went to the boot of the car, obtained a bag and then ran. You knew a person had suffered serious injury as a result of the collision which is confirmed by you telling a witness to call an ambulance and by your plea of guilty to Charge 7. You were more interested however in protecting yourself from arrest and protecting whatever you had in your bag. Your counsel submitted that your conduct was callous and cowardly. While those phrases may be objectively correct, in my view your conduct was entirely self focused, as your victims lay on the road

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<sup>4</sup> *DPP v Weybury* [2018] VSCA 120 at [54] (Priest JA).

with life threatening injuries. Therefore, in my opinion this is a serious example of this offence.

- 38 Ms Piekusis who appeared on behalf of the Director of Public Prosecutions, submitted that your overall offending places your moral culpability at a high level. I agree. While relying on the matters I have already referred to above, Ms Piekusis also noted that your driving placed a number of road users at risk as you veered across the oncoming traffic and made reference to the fact that your offending occurred within weeks of being released from prison having served another sentence. These are relevant matters that must be taken into account.
- 39 As to your other offending, involving the burglary and thefts, while they are not at the high end of seriousness, they occurred in circumstances where you have an extensive prior history for similar offending and thus in my view still represent serious offending.

### **Victim impact statements**

- 40 Seven victim impact statements were tendered and read on the plea. Mr Mandhan and Ms Katsambanis both prepared statements. The remaining statements are from members of Ms Katsambanis' family and extended family. I have taken the contents of each victim impact statement into account.
- 41 Mr Mandhan speaks of the ongoing pain he suffers as he continues to consult medical professionals and engage in the slow process of rehabilitation. He speaks of how he was a very active person before the collision, involved in sport and social events with his friends and notes the mental anguish he suffers as he is simply unable to participate in these activities.
- 42 Ms Katsambanis was commencing her VCE year when the collision occurred and speaks of the difficulties of having to catch up on school after returning months after the accident while still having to attend ongoing rehabilitation. In

addition to describing the physical impact of her serious injuries, she speaks of the emotional impact of having to miss many year 12 activities and notes that she has lost a number of friends who have failed to continue to support her.

- 43 The remaining victim impact statements all convey the emotional effect the incident has had on each of the writers from the first news of what had occurred to the ongoing impact the crime had had on the family and extended family of Ms Katsambanis.

### **Personal circumstances**

- 44 You are currently 37 and were 35 years of age at the time of the offending.
- 45 You are one of three children having two older sisters. Your mother was at home when you were young and later worked as a kitchen hand in various hotels and at a hospital. Your mother passed away in April 2014 as result of a brain tumour. Your father was a violent man and an alcoholic. He left your mother around the time you were born. You did not spend much time with your father in your early years and only knew him when you were about seven or eight. He passed away in June 2019 as result of lung cancer. You were in custody at the time but were permitted to attend the funeral.
- 46 Your mother commenced a relationship with another man when you were about two and half years of age. He too was a violent alcoholic. In June 2015, he also passed away as result of cancer. You report that he was violent toward your mother and you witnessed such violence on occasions.
- 47 You attended three different primary schools as result of one closing and as a result of you moving from Heidelberg to Mill Park. You did not excel at school and ultimately secondary school was not successful either. You were expelled in year eight from McLeod Technical College and then later attended Peter Laidlaw Secondary School where you got into further trouble. It was at that time you were sent to live with your biological father in Adelaide.

- 48 Your father allowed you to drop out of school on the condition that you obtain employment. You did obtain employment spot welding in vehicle construction which you did for approximately three years until age 20.
- 49 Your relationship with your biological father was initially good but deteriorated. You would stand up to your father when he was violent towards his then partner. This led to you being the victim of violence by your father.
- 50 Ironically, as a result of seeing the effects alcohol has had on your various relationships and the destruction it caused, you have never been a drinker. That said, you started using cannabis at age 12, amphetamine at age 15 and heroin at age 17. In recent years you have alternated between periods of reliance on either methamphetamine or heroin. You state that you have overdosed a number of times on heroin requiring resuscitation. You stopped using heroin approximately eight years ago however you have had ongoing difficulties with methamphetamine.
- 51 You have two children of your own; a son aged 16 who lives in Adelaide and a younger daughter, aged nine. You have no involvement in their lives.
- 52 You have an extensive criminal history that commenced in 2000 in Victoria and 2002 in other states. Your history is largely made up of dishonesty and drug related offending but does include some driving matters. You have spent extensive periods of time in custody and, as noted above, you had only recently been released from custody when this offending occurred.
- 53 It was submitted that since being on remand in relation to this matter you have been productive in custody. It was put that while you have spent a number of periods of time in custody in the past, on this occasion, you have demonstrated your commitment to rehabilitate yourself by engaging yourself in programs and work within the prison. You are working in the laundry six days a week and you have taken on a role teaching other prisoners the work. You have started a fitness program in your unit and you have completed a number of courses and programs in custody.

## Relevant sentencing considerations

- 54 Mr Anderson highlighted a number of matters in mitigation. First and foremost is your plea of guilty. As early as June 2019 you indicated your willingness to resolve this matter prior to a formal opportunity to do so, by asking if you could write letters of apology to the victims. Ultimately, the matter resolved at a committal mention in July 2019. I accept that your plea has been entered at the earliest opportunity. Your plea of guilty has of course avoided the need for witnesses to be cross examined at a committal and trial and importantly, has avoided the need for the victims to give evidence and relive the trauma of the incident. As such, your plea reflects your acceptance of responsibility and has facilitated the course of justice.
- 55 Over and above your plea of guilty I accept that there is some evidence of remorse. Despite your very long history of offending behaviour, it seems that on this occasion on remand you are making a genuine attempt to rehabilitate yourself as a result of the realisation of the very serious harm that you have caused to young and entirely innocent victims.
- 56 Deterrence, both general and specific, are prominent sentencing considerations in this instance. Denunciation of your conduct also weighs heavily in the sentencing discretion. Persons like you who have no regard for the law, driving on our roads without a licence in a stolen car putting the community at great risk, must understand that severe consequences will follow.
- 57 You have a very long and extensive criminal history and while it does not involve offending of this nature, you clearly have not benefited from previous sentences or attempts to assist you via community based dispositions. As to the burglary and theft charges, you have a number of prior convictions for those offences and specific deterrence must also be a prominent sentencing consideration in relation to that offending.
- 58 As to your prospects of rehabilitation, for the reasons already noted in relation to the steps you are taking in custody since being on remand, it would seem

that on this occasion with the knowledge that you will be spending a considerable period of time in custody, you are committed to engaging in the opportunities that are offered to you in prison in order to set yourself up for a better opportunity once you are ultimately released. You do however have an extensive criminal and drug history and, despite the efforts you are making, it is early days and at this stage your prospects of rehabilitation cannot be assessed positively.

59 While the injuries to both victims are different, they both suffered very serious, life threatening injuries. Further, both victims have had to endure the difficult and long term effects which will continue into the future. In the circumstances as I am unable to meaningfully differentiate between the level of injury between the two victims, I will impose the same sentence on each of the NCSI charges.

## **Sentence**

60 Mr Lees please stand.

61 Robert Michael Lees, in relation to Charge 1, burglary, you will be convicted and sentenced to 12 months imprisonment.

62 In relation to Charge 2, theft of the motor vehicle, you will be convicted and sentenced to 12 months imprisonment.

63 In relation to Charges 3 and 4, theft of the number plates, you will be convicted and sentenced to 2 months imprisonment on each charge.

64 In relation to Charges 5 and 6, negligently causing serious injury, you will be convicted and sentenced to 4 years and 6 months imprisonment on each charge. Charge 5 will be the base sentence.

65 In relation to Charge 7, failing to render assistance, you will be convicted and sentenced to 2 years imprisonment.

- 66 In relation to summary charge 6, unlicensed driving, you will be convicted and sentenced to 2 months imprisonment.
- 67 I direct that 2 years of the sentence on Charge 6 and 12 months of the sentence on Charge 7, be served cumulatively on each other and on Charge 5. That makes for a total effective sentence of 7 years and 6 months imprisonment. I direct that you serve a period of 5 years and 6 months imprisonment before becoming eligible for parole.
- 68 Pursuant to s 18 of the *Sentencing Act* 1991, I declare that 416 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.
- 69 Pursuant to s 89(2)(b) of the *Sentencing Act* 1991 you will be disqualified from obtaining a licence for a period of 5 years from today.
- 70 Pursuant to s 6AAA of the *Sentencing Act* 1991, I indicate that had you not pleaded guilty, I would have sentenced you to a period of 9 years and 6 months imprisonment with a non-parole period of 7 years and 6 months.

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