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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21847977

THE QUEEN

and

BRANDON YOUNG-TURNER

(Sentence)

SOUTHWOOD J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON THURSDAY 3 OCTOBER 2019

Transcribed by:
EPIQ

HIS HONOUR: The offender, Brandon Young-Turner, has pleaded guilty to six counts on an indictment dated 1 October 2019.

Count 1 on the indictment pleads that, contrary to s 174F(2) of the *Criminal Code*, on 4 November 2018 at Palmerston, the offender drove a motor vehicle dangerously and caused serious harm to TR.

Count 2 on the indictment pleads that on 4 November 2019 at Palmerston the offender drove a motor vehicle dangerously and caused serious harm to KR.

Count 3 pleads that on 4 November 2019, at Palmerston the offender drove a motor vehicle dangerously and caused serious harm to JR.

Count 4 on the indictment pleads that on 4 November 2018 at Palmerston, the offender engaged in conduct that gave rise to a danger of serious harm to MK, being reckless as to the danger of serious harm to the said person that arose from the conduct.

Count 5 on the indictment pleads that on 4 November 2018 at Palmerston, the offender engaged in conduct that gave rise to a danger of serious harm to CK, being reckless as to the danger of serious harm to the said person that arose from the conduct.

Count 6 on the indictment pleads that on 4 November 2018 at Palmerston, being the driver of a motor vehicle which was involved in an incident that resulted in serious harm to TR, KR and JR, he failed as soon as was reasonably practicable after the incident to notify a representative of the police force that he was the driver of the motor vehicle involved in the incident.

The maximum penalty for each of those offences is imprisonment for 7 years.

The offender is currently 26 years old. He was 25 years old at the time of the offending.

He was born in Darwin. He was initially raised by his mother and father, Patricia and Douglas Turner. His parents had a tumultuous relationship, marred by domestic violence and substance abuse. He, too, was subject to domestic violence during the persistence of that relationship.

When the offender was about 7 years old his mother left his father. She took him and his sister to Victoria to stay with her family. The offender described that initially he was hopeful that life would be better in Victoria away from his father's violence, but his hopes did not materialise. He informed his counsel that life was worse in Victoria because his mother never stopped drinking. They had no family other than her father. His mother just took them along for the ride, but she never took care of them. She had some boyfriends and when they were around they punched her too, like a punching bag. She was stabbed in the leg by one of them

named Ronald Larkin. The offender had to strap her left leg with a bandage because there was no one else to help her.

After that, he and his sister and mother ran away. They fled from Victoria back to Darwin. The three of them lived transiently around Darwin. The offender went to over ten different primary schools during his youth. The transience and instability in his home life had a deleterious effect on his school attendance and his familial relationships with the other step-siblings. When the offender was about 10 years old, he became sick of witnessing his mother's substance abuse and neglect and he moved in with his grandmother.

The offender first obtained employment at the age of 13 years at Kentucky Fried Chicken while he was still at school. After he left school, he obtained employment installing air conditioners. Thereafter, he was employed in construction.

When he was 17 years old, he moved to Nhulunbuy. While he was in Nhulunbuy, he was employed full-time as an air conditioner installer.

When he was 18 years of age, he obtained a position working for fire protection, installing gas and sprinkler systems and servicing fire-fighting equipment. He worked in Darwin in that occupation until he was 21 years of age, at which time he moved to Maningrida to live with his cousin. While in Maningrida he was, again, employed in construction.

After about eight months in Maningrida, the offender moved back to Darwin and found employment with B & D Construction in civil construction. He worked there for about a year and then obtained employment at Diggerman Construction in September 2017, again, in civil construction. His principal duties were operating machines and laying pipes.

He was working for Diggerman full-time until he was arrested in November 2018 for these six offences.

The offender is in a relationship with a de facto partner and he and his partner have two children.

As a result of his deprived and dysfunctional upbringing, the offender has had a problem with the misuse of alcohol since he was 14 years of age. He uses alcohol as a coping mechanism.

The offender has a criminal record that extends for two pages. It reveals that he has a poor history driving. He has nine prior convictions for driving offences and two prior convictions for breach of bail. So far as his convictions are concerned, the offender last drove with a high-range blood alcohol content on 1 November 2013.

The facts of the offending are as follows.

On 11 June 2014, his Honour, Judge Carey, imposed a court order disqualifying the offender from driving a motor vehicle for a period of 5 years.

There are five victims of the offences committed by the offender.

Victim 1 is MK, a 25-year old female who was the driver of a blue Hyundai.

Victim 2 is CK, a 16-year old male who was seated in the rear driver's side of the offender's motor vehicle.

Victim 3 is TR, a 19-year old male who was seated in the rear passenger side of the offender's motor vehicle.

Victim 4, KR, is a 19-year old male who was seated in the rear middle of the offender's motor vehicle.

And victim 5, JR, a 22-year old male who was seated in the front passenger seat of the offender's motor vehicle.

During the evening of 3 November 2018, the offender was the driver of a white Toyota HiLux dual-cab utility. The offender travelled to an unknown address in Farrar to meet up with family members for a barbecue and, upon arrival, was observed exiting the seat of the vehicle. Some of the guests at the residence included CK, TR, KR and JR.

The offender remained at the location and consumed beers over a period of a few hours. At 10 pm, the offender entered the driver's seat of his HiLux with JR entering the front passenger seat. He drove around the area for a short time, before returning to the residence and asking others if they were coming with them.

CM entered the vehicle and sat in the rear passenger seat behind the offender. TR sat behind the front passenger seat and KR sat in the rear middle. All of the passengers in the motor vehicle were intoxicated.

The offender travelled outbound along the Stuart Highway for a period of time until he was in the vicinity of Berry Springs Recreation area on Cox Peninsula Road. At this point in time, KR asked where they were going and asked to be driven to Parap to go home to bed. The offender did a U-turn and began travelling inbound along the Stuart Highway.

At 10:40 pm, the offender was travelling inbound on the Stuart Highway towards Palmerston and was approaching the red light intersection of Stuart Highway and Jenkins Road. The offender travelled directly through the intersection without braking and continued travelling inbound along the highway. That was the first red light he drove through.

KR told the offender not to run red lights. However, the offender stayed quiet and did not acknowledge his concern. At 10:43 pm, the offender entered, travelling

through a green light, the intersection on Stuart Highway and Girraween Road, activating a traffic speeding camera which recorded the offender's speed at that time as 94 kilometres an hour, which was 14 kilometres over the registered or posted speed limit of 80 kilometres an hour.

At 10:45 pm, MK was stationary in her vehicle in the right-turning lane at the intersection of Lambrick Avenue waiting to turn right onto the Stuart Highway. The traffic light signalling her to turn right was red. Another vehicle was stationary in front of her.

The offender continued to travel towards the intersection with high-beam lights activated despite the active advanced warning signals situated either side of the inbound lane of the highway flashing amber for 6.1 seconds prior to the intersection traffic lights changing from green to amber. KR again told the offender about the upcoming red light, saying, "Look ahead." Once again, the offender failed to acknowledge him and continued travelling straight ahead.

Upon the green arrow activating in the right turning lane from Lambrick Avenue, MK travelled forwards in her motor vehicle by entering the intersection to turn right as she had right of way. As her car travelled a short distance into the intersection, the offender failed to obey the red light signal on the Stuart Highway and entered the intersection at speed, without braking and collided with the driver's side of the bonnet of MK's vehicle, causing it to rotate a complete 360 degrees twice before coming to rest 10 metres from the point of impact.

At the time of the offender's vehicle entering the intersection, the red light had been activated in his direction of travel for 32 seconds. All airbags inside MK's vehicle deployed and both her legs were knocked around the foot well, causing cuts and bruising. MK remained trapped inside her vehicle due to the airbags.

The offender's vehicle rotated 180 degrees and skidded approximately 50 metres backwards before striking a large palm tree in the median strip of the Stuart Highway, forcing it to come to a complete and sudden stop. The force of the crash caused the offender and all four victims inside his vehicle to become unconscious.

The offender's vehicle continued to travel at speed after colliding with MK's vehicle. It had been determined that the offender's car was travelling at 95 kilometres an hour when it collided with the palm tree. I infer from that that he must have been travelling over 100 kilometres an hour when he entered the intersection.

Bystanders rushed to both the offender's and MK's vehicles to render aid. CK gained consciousness and discovered all the other occupants were still unconscious. CK was able to awaken the offender, shortly followed by JR.

The offender opened the rear driver's side door from the outside, so CK could exit the wreckage. CK checked the pulse of KR before extracting him from the

vehicle while he was still unconscious. It then became known that TR was trapped in the rear seat and was unable to be removed. The offender was able to wake JR in the front seat before he too exited the wreckage.

Bystanders arrived on scene and began phoning police. At 10:54 pm, prior to any emergency services arriving at the scene, the offender and JR walked away from the crash and sat down on the median strip approximately 50 metres from the crashed vehicle.

At 10:56 pm, Acting Sergeant Goldsmith arrived at the crash scene. Both the offender and JR were seen sitting down on the median strip of the Stuart Highway. As Acting Sergeant Goldsmith approached them he asked them if they were okay, to which they replied, "Yeah." Neither the offender nor JR identified themselves to the police as having any knowledge or being involved in the crash.

At 10:58 pm, the offender and JR stood up and walked across the road to the Johnson side of the road. At 10:59 pm, upon arrival of the fire and rescue officers, the offender and JR began to leave the scene by walking inbound along the side of the Stuart Highway towards Palmerston.

Senior Constable Sean Burns and Constable Gary Palmer arrived at the crash scene and began assisting the victims at the offender's vehicle for a short time before they were made aware of the offender and JR leaving the crash scene prior to speaking with police. Senior Constable Burns and Constable Palmer gave chase and called upon both the offender and JR multiple times to stop. However, they failed to comply and continued to walk away without acknowledging police.

About 200 metres from the crash scene, Senior Constable Burns stopped and apprehended both the offender and JR as he formed the belief that they were involved in the crash. Upon JR being spoken to by Constable Palmer, he denied being involved in the crash by saying, "No, I wasn't. I was with my older brother and I was not involved in that car accident."

The offender called out to him by saying, "[JR], [JR], look at me, shush." Constable Palmer asked the offender about the crash, to which the offender replied, "The accident, I don't know. What do you want to know?"

First Class Constable David Costello and Constable First Class Colin Quidley also attended the location of the offender and JR. JR denied being in the crash at all. Both the offender and JR were placed under arrest and cautioned.

At the point of arrest the offender looked at JR and told him to relax and, in effect, be quiet. JR was secured into a caged vehicle and the offender remained with Constable Palmer and Constable Quidley.

Senior Constable Brad Leggett arrived at the scene and began conducting name checks to confirm the identities of the parties involved in the crash. The offender disclosed to Constable Palmer and Constable Quidley that he was not

carrying his driver's licence on him and he was a disqualified driver from a court case involving drink-driving charges.

Constables Blythe and Todd Ackerly arrived at the scene in a caged vehicle. Constable Ackerly conducted a roadside breath test on the offender which returned a positive reading for alcohol. Upon being placed inside the caged vehicle, Constable Quidley observed an injury with blood on the offender's left heel. The offender was asked how he sustained the injury, to which he replied, "Two to three days ago."

The offender was taken to the Royal Darwin Hospital for medical treatment and a blood sample was taken under the authority of the *Traffic Act*. The sample of the offender's blood was later analysed and found to contain a concentration of not less than .203 grams of alcohol per 100 millilitres of blood. That is a high blood alcohol reading.

JR was taken to the Palmerston Regional Hospital where he provided a sample of blood also. JR was later taken to the Royal Darwin Hospital for further observation and then taken to his grandmother's home.

At 11:40 pm on 18 November 2018, the offender was taken to the Darwin Watchhouse. He declined the opportunity to participate in an electronic record of interview and was later charged and remanded in custody.

As a result of the offender's actions, all five victims were hospitalised with the following injuries.

As to MK, she was admitted to the Emergency Department for four hours with cuts and bruising to both legs, numbness to both legs for one week, and small cuts and tenderness to the left upper chest area from the seatbelt.

As to CK, he was also admitted to the Emergency Department for a few hours. He suffered a right shoulder sprain and strain, headaches and neck pain, and blunt-force trauma to his forehead.

As to TR, he was admitted to Intensive Care and placed in an induced coma. He suffered left-side rib fractures in the third, fourth, fifth, sixth and seventh ribs; a transverse process fracture of his spine at the T2 level; right posterior acetabular fracture, that is, in his hip; haemorrhagic pulmonary contusions on the lungs; mediastinal haematoma; multiple abrasions on the sacrum, which is part of his shoulder; left-sided scapula, right side and left anterior chest and temple swelling. Surgery was not required for his injuries.

KR was admitted to Intensive Care also. He suffered a right distal humerus fracture; that is, of his elbow, requiring surgery, metal plates and screws; pulmonary contusion on the right lung, and a grade III liver laceration.

JR was admitted to hospital. He suffered a left subdural haematoma, that is, a soft tissue injury under the skull with minor bleeding on the brain; pain in the left elbow, wrist and knee; a bruised hip and headaches and vomiting. He did not require surgery.

The injuries suffered by TR, KR and JR amounted to serious harm. KR had to return to hospital and was admitted on 21 November 2018 for further surgery on his left elbow due to possible infection. No infection was located. The wound was washed out during surgery and re-closed.

The offender, as I have said, did not identify himself to the police as the driver of the motor vehicle involved in the crash. The victim, MK, has sought restitution in relation to loss of wages and in relation to the excess on the insurance claim for her motor vehicle.

I find the facts proven and I convict the offender of all six counts on the indictment.

The offending is serious offending. The offender was disqualified from driving at the time. He had been previously disqualified from driving.

He made a conscious decision to drive after drinking alcohol to the point of a high level of intoxication. He knew he had already been disqualified from driving at the time he chose to drive. As I have said, his blood alcohol content was very high.

He drove at speed and he ignored the requests of the passengers in his motor vehicle not to go through red lights. At the time the offender's motor vehicle entered the intersection at which the motor vehicle accident occurred, I infer that he was travelling in excess of 100 kilometres an hour. So, he was travelling at speed, through a red light after being warned not to go through a red light, while intoxicated and while being disqualified from driving because of his serious history of driving offences. Having done that, and having observed that the passengers in his motor vehicle were seriously injured, he then, in a cowardly manner, endeavoured to slink off and avoid informing the police of the highly dangerous and highly culpable driving in which he engaged on that night in a deliberate manner.

His disregard of his disqualification for driving is contumelious. The consequence of his driving has caused serious injury to three of the passengers, and loss and placed a demand on scarce medical resources.

In his victim impact statement, CM states he suffered a right shoulder ligament tear; left side of hip was bruised; bruising on the forehead and neck pain. At the time he made his victim impact statement, he was continuing to suffer from flashbacks and nightmares and fear.

In his victim impact statement, KR states that he has a broken left elbow. He was shaken up, but he thinks he will be okay. He has not been able to go to work, and so he cannot pay rent or buy food.

TR states he fractured his ribs and back, had blood on the lungs and a few minor injuries. At the time he made his victim impact statement, he had nightmares some nights. He was in a lot of pain and it was hard to sleep.

JR states that he suffers from ongoing health problems. He has also had to take pain relief every four hours. He stated, at the time he made his victim impact statement that he felt like an emotional wreck:

I have too many mixed emotions all the time; anger, rage, sad and even depressed that my little brothers are worse off with their injuries. My pain in the morning is a reminder to never get in a car with a drunken person ever again. Most mornings my body from head to toe is aching and getting out of bed to take pain relief seems impossible.

In her victim impact statement, MK states that she suffered swelling of both legs and bruising developed. Her skin was scraped. She had cuts to her chest and scars. Her armpit also displayed bruising, putting weight on her legs was painful and, therefore, she had to take a week off work.

As to the emotional impact of the incident, she stated:

The incident had an effect on my emotional well-being. I am going to be more cautious at the traffic lights. This incident has not just affected myself, but also my family. Their personal lives were interrupted. The day I got my new car my mum was affected. She said it just hit her how close she came to losing me. She is worried all the time when I am out in my car, waiting for me to come home.

By way of mitigation, I take into account the offender's early pleas of guilty. I also take into account that the offender has now, at long last, taken steps to try and deal with the problem he has with the misuse of alcohol. He has started Strong Steps. The report from the counsellor in relation to that states:

He has engaged in three counselling sessions by phone. During counselling, the offender's communication skills are improving and he is open, honest and respectful during sessions. The offender has actively engaged in relapse prevention strategies, and topics covering high-risk situation triggers, urges and cravings.

The treatment involved in Strong Steps is evidence-based, and includes cognitive behaviour therapy and motivational interviewing.

In the report from Top End Health Service, it is stated that:

The program received a referral from the offender on 31 December 2018. He was wait-listed. The offender was found eligible on 22 February 2019 and, since this date, has actively participated in a comprehensive assessment, six

individual sessions to provide education and counselling to address previous substance use, and a referral for ongoing alcohol and other drug counselling with Strong Steps.

The offender engaged in individual counselling and stated he knew he had a problem with alcohol and that he wished to address it for his family's sake.

Given his willingness to address the problem his engagement, although willing, challenged him at times. Addressing a problem is one thing; accepting it is another. His engagement with our program has focused on ways to address his problem drinking versus his coping behaviours to reduce risk and support informed decision-making.

His engagement has resulted in growing awareness of his coping behaviour that results in problem drinking. Based on the assessment completed, the offender would benefit from ongoing treatment and specialised alcohol and other drug support.

The offender has also been assessed for supervision and it has been found that he is suitable to be supervised. What is of concern, however, is that he informed the Probation and Parole Officer who prepared the s 103 assessment report that since his last driving offence for which he was convicted for a high blood range alcohol, he has driven without licence, mainly to get to work. In addition, he stated he would drive while under the influence of alcohol. However, this did not occur often. He made the decision to drink-drive on this occasion because nothing had happened before, indicating that he disregarded the fact that he was subject to a significant disqualification from driving.

The principle sentencing objective in a matter such as this is general deterrence. It is well-known and there are extensive education programs and articles in the media and on the television to the effect that it is highly dangerous to drink-drive.

It is also apparent that weight needs to be given to specific deterrence. The offender, although he does not have a driving record as horrendous as many others who come before this court, still has a bad driving history and he has obviously not learnt his lesson (perhaps up until now when he is at last showing some insight into his offending) because he has continued to drive while subject to serious disqualification.

Further, weight has to be given to denunciation. The community strongly disapproves of offenders who engage in drink driving and end up committing or being engaged in accidents as serious as the accident that the offender caused. The community, as I say, strongly disapproves of such dangerous conduct.

However, the offender is still a relatively young man. As I said, he is only 26 years of age. He has also started to show some insight into his offending and has taken steps to change his ways, ways which have developed as a result of the difficult and deprived upbringing that he has had.

It seems to me that this is an appropriate case as it arose out of one episode of driving to impose an aggregate sentence, rather than a sentence in respect of each of these crimes with which the offender has been charged.

I sentence the offender to 3 years' imprisonment. The sentence of 3 years' imprisonment is backdated to 18 November 2018, to reflect the time that the offender has already been in prison.

I have reduced the sentence that I otherwise would have imposed on the offender by 12 months. I also note that the offender has been on remand for almost 12 months. The sentence is to be suspended after the offender has served 12 months in prison from 18 November 2018.

It is to be suspended on the following conditions:

1. For a period of 2 years after he is released from prison, the offender is to be under the supervision of a probation and parole officer and he is to obey all reasonable directions as to reporting, residence and work.
2. For that period of 2 years, the offender is not to consume alcohol and he is to be subject to testing for alcohol.
3. During that period, the offender is not to consume illicit or dangerous drugs and he is to be subject to testing for illicit or dangerous drugs.
4. The offender is to enter into FORWAARD and complete the course with FORWAARD as soon as he is released from prison; that is, immediately after he is released from prison, provided there is a bed available. I direct Community Corrections to enquire about the availability of a bed before the offender is released from prison. He is to engage in and complete the course at FORWAARD and is to do nothing to cause his early discharge from FORWAARD.
5. In addition to the sentence I have imposed on him, he is suspended from driving for a further 3 years from the date that he is released from prison. His licence remains cancelled for that period of 3 years.
6. I further order, and I note there may be further orders made in relation to restitution, that he is to make restitution to the victim, MK, in the sum of \$800, and he is to have 12 months from the date he is released from prison to pay that sum of \$800.

That means you will be released from prison on or about 17 November this year. When you are released from prison, you will need to enter into FORWAARD and complete that course at FORWAARD. Now, I give you this warning. If you do not complete that course at FORWAARD, I will revoke the whole of the balance of your sentence and you will serve that time in prison.

I also give you the following further warnings. If you drive while you are disqualified, I will send you to prison for 1 month. I also make it a condition of your suspended sentence that you are not to drive for the period that I have disqualified you from driving, that 3-year period.

So, if you drive at all during that period, on each occasion that you do I will send you to prison for 1 month.
