

Aggravated Dangerous Driving Causing GBH

s.52A(4) (NSW) *Crimes Act*

s.52A (3) ... vehicle driven by offender is involved in impact occasioning GBH of another person and driver was, at time of impact, driving vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

(4) commits offence of dangerous driving occasioning GBH in circumstances of aggravation.

(7) Circumstances of aggravation:

- (a) the prescribed concentration of alcohol was present in the accused's breath or blood, or
- (b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road, or
- (c) the accused was driving the vehicle to escape pursuit by a police officer, or
- (d) the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).

Maximum penalty: 11 years

Commenced: 23.12.1994

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	Savka (1996) 88 A Crim R 393	2 x s.52A(4) (alcohol) Sched drive unlicensed & unregistered	PG	300h CSO	Crown AA MT 18m AT 18m	Good character	Struck tree injuring 2 passengers.
2.	Milson NSWCCA 10.12.1997	2 x s.52A(4) (PCA)	PG	400h CSO	Crown AA Should have been full-time custody 30mth PD	traffic matters	Ran red light on major highway intersection at 1.10am - alcohol reading: 0.192.

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3.	Debnam (28) NSWCCA 2.3.1998	s.52A(4) (PCA) Sched: drive unlicensed	PG	MT 3y AT 1y	AD	extensive traffic record	Veered into milk vendor parked on side of road - had been drinking heavily - reading 0.217.

Cases post-Juriscic 12.10.98 (Guideline Judgment)

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
4.	Errington (44) [1999] NSWCCA 18	s.52A(4) (intoxication)	PG	Home Detention 18m	Crown AA MT 1y AT 18m	High range PCA (1982)	High range alcohol (0.278) - drinking from 8am until just before collision at 6pm – speeding - changed lanes and lost control - mounted kerb colliding with pole wife seriously injured (later died of sepsis following surgery). Considerable remorse.
5.	Bicheno (45) [1999] NSWCCA 148	2 x s.52A(4) (PCA)	PG	MT 2y AT 2y	AD	single speeding offence	Heavily intoxicated (0.263) - collided with another car injuring 19y female driver and offender's de facto wife.
6.	McAskill [2000] NSWCCA 350	2 x s.52A(4) (intoxication)	PG	MT 3y AT 1y	AD	offences for mid and high range PCA	Drank 10-12 schooners of beer and caught taxi home - drove to work in early hours of morning after being unexpectedly asked to fill in for friend - drove on to wrong side of road forcing small car with female passengers off road - passengers suffered broken bones - 0.155 - more than bad error of judgment. Good character evidence.
7.	Khan [2000] NSWCCA 454	s.52A(4) (intoxication)	PG	4y 6m NPP 3y 4m 15d	AD	prior offences including high range PCA	While speeding and intoxicated lost control on bend and crashed over steep embankment - female passenger lost leg.
8.	Turner [2000] NSWCCA 455	s.52A(4) (intoxication)	PG	3y NPP 2y 3m	AD	high range PCA and other driving offences	While intoxicated, unlicensed and speeding on damp road at night lost control of car and crashed into fence - passenger suffered serious fracture.
9.	King (34) [2001] NSWCCA 18	s.52A(4) (PCA)	PG	2y PD	Crown AA 2y NPP 12m	two prior drink driving convictions	Intoxicated - while crossing narrow bridge bent down to pick up cigarette - hit kerb and veered into oncoming car - severe injuries to driver of other car - 0.273 blood alcohol reading. Good life history - deep remorse.

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10.	Pates [2001] NSWCCA 142	s.52A(4) (police chase) Sched: SMV Larceny	PG	4y 6m NPP 3y	AD		Involved in police chase driving stolen vehicle - drove through red light and collided with another car - driver seriously injured - abandonment of responsibility.
11.	Douglass [2001] NSWCCA 250	s.52A(4) (PCA)	VG	2y NPP 6m	AA 21m suspended	prior convictions for drink driving	Driving with alcohol level of 0.190 - no abandonment of responsibility but behaving reprehensibly and conduct well towards upper level of culpability. Wife become quadriplegic - taken over full time care of wife - effect of incarceration on wife - served 3 months custody.
12.	Kaliti (30) [2001] NSWCCA 268	s.52A(4) (intoxication)	PG	5y NPP 3y 9m	AD	prior good character and clear driving record	Intoxicated when struck male standing next to box trailer - catastrophic injuries resulting in loss of both legs and brain damage - clear and significant abandonment of responsibility - deliberate decision to drive while over the limit.
13.	Lee (2002) 131 A Crim R 209 [2002] NSWCCA 236	s.52(4) (PCA)	PG (25% on appeal)	3y NPP 18m	AA 2y 3m NPP 1y 1m 2w	old PCA offences - driving with suspended licence	Collided with motorcyclist after disobeying traffic light - Intoxicated Resumed drinking after murder of only child - depression - aggravated around anniversary of death - good prospects of rehabilitation
14.	Whyte (2002) 134 A Crim R 53 [2002] NSWCCA 343	s.52(4) (PCA)	PG (10%)	2y 3m NPP 12m	Crown AD	prior alcohol offence involving motor accident	Fell asleep at wheel of car - Car veered into on-coming traffic - Passenger of mini-bus severely injured - Intoxicated having been drinking night before and day of accident Genuine remorse - Appeal dismissed because of delay
15.	Plumb [2003] NSWCCA 359	2 x s.52(4) (intoxication)	PG (20%)	<i>Total:</i> 2y 6m NPP 18m	AD	nil	Intoxicated – Drove over double yellow lines – Caused head on collision with incoming vehicle – Serious injuries to two victims.
16.	Buchanan [2004] NSWCCA 141	s.52(4) (intoxication)	PG (25%)	2y 6m NPP 15m	AD	Not stated	Female - Drove while intoxicated – crossed double lines on curve and collided with on-coming vehicle – caused permanent dental damage to driver – high moral culpability Drove to escape boyfriend's violence
17.	Takai (21) (2004) 149 A Crim R 593 [2004] NSWCCA 392	s.52(4) (alcohol)	PG	3y 6m NPP 21m	AA 2y 6m NPP 1y 3m	Nil	Female - Lost control of car and collided with power pole injuring passenger – Intoxicated at 0.169 Error in finding level of intoxication x5 over the limit

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18.	McMillan (52) [2005] NSWCCA 28	s.52(4) (alcohol)	PG (20%)	3y NPP 1y 9m	Crown AA 4y NPP 2y 6m	Alcohol related offences including manslaughter	Collided with oncoming traffic on wrong side of country road – Intoxicated – High level of moral culpability
19.	Kopacka (40) [2005] NSWCCA 83	s.52(4) (alcohol)	PG (15%)	4y 6m NPP 2y 6m	AD	Appalling traffic record - 9 x DUI - disqualified driver	Drove unregistered/uninsured car while disqualified – overtook over double unbroken lines, then lost control – swerved onto wrong side and off road into tree – Injuries to passengers at lower end of scale – BAC 0.281 – high culpability Supportive relationship – little insight into alcohol problems – liver problems
20.	Gonzalez [2006] NSWCCA 4	2 x s.52A(4) (PCA)	PG	2y 6m NPP 1y 3m	AA to amend orders – same effective sentence imposed	Poor traffic record – breached traffic bond	Lost control on bend and collided with pole injuring passengers – intoxicated – high moral culpability Youth and good character
21.	Elyard (24) [2006] NSWCCA 43	s.52A(4) (intoxication)	PG (20%)	5y NPP 2y 6m	AD	Breached probation	Ran red light and struck pedestrian causing serious injuries – significantly affected by drugs Remorse
22.	Doyle [2006] NSWCCA 118	s.52A(4) (PCA)	PG	2y Suspended sentence	Crown AA 3y NPP 18m	Nil	Intoxicated at 0.205 – drove onto other side of road colliding with car driven by family – victim suffered ruptured spleen from which recovered Depression – drug abuse.
23.	Carruthers (48) (2008) 182 A Crim R 481 [2008] NSWCCA 59	s.52A(4) (PCA)	PG (25%)	2y 2m 29d NPP 1y 8m 9d PD	Crown AA 2y 2m NPP 1y 8m	Drink driving	Turned across path of motorcyclist – serious injuries to ankle – high range blood alcohol level Involved in voluntary organisations – drinking problem
24.	Brooks [2009] NSWCCA 265	2 x s.52(4) (intoxication) Sched: Drive unreg Drive unlicensed	PG (25%)	3y 6m NPP 2y	AD	Extensive history of driving offences	Drinking with victims at hotel – drove in unregistered custom built hot rod – lost control of car, mounted curb and rolled – no seat belts fitted to car – passengers ejected from car Offender seriously injured with long term injuries

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25.	Kyle (27) [2014] NSWCCA 300	s.52(4)	PG (25%)	3y NPP 1y 9m	Crown AA 4y 6m NPP 2y 9m	Nil	Drinking heavily and had been admitted to hospital – on release from hospital proceeded to drive vehicle – crossed over double lines and collided with V who was riding motorbike – V suffered catastrophic permanent injuries, including lost movement in left leg, wheelchair bound - drove for 50 km on major and busy arterial roads whilst in a heavily intoxicated state. Supportive family – good character - remorse.
26.	Tuhakaraina (49) [2016] NSWCCA 81	s.52(4) (PCA)	PG (25%)	2y 6m NPP 6m	Crown AD	Traffic offences	Drank heavily during lunch hour – likely reading of 0.194 - collided with motorcyclist – did not check on Victim or call assistance but went home - victim suffered injuries to hip, ankle, knee with lifelong functional impairment and ongoing chronic pain and stiffness in ankle – travelled 1.5 km, through areas with high pedestrian traffic, and at time of day when many people and schoolchildren going home. CCA – NPP erroneously lenient - SJ in error to give too much weight to ill-health of A's wife - however appeal dismissed due to delay in matter
27.	Vale [2016] NSWCCA 154	s.52A [escape police pursuit] Engage in police pursuit Sched: 2 offences	PG (25%)	6y NPP 3y FT 3y (concurrent)	AD	Lengthy record – spent most of adult life in custody - breached parole	While babysitting 17mth nephew placed him in front seat of car in seat belt only – speeding – police pursuit – lost control and collided with tree – complete abandonment of responsibility – drug affected – high level of breach of trust Aboriginal with difficult childhood – injured as result of crash
28.	Ul-Hassan (mid-20's) [2018] NSWCCA 177	3 x s.52A(4) Sched: Mid-range PCA	PG (25%)	<u>Aggregate:</u> 6y NPP 3y	AA <u>Aggregate:</u> 5y NPP 2y 6m	Nil	Intoxicated and also had taken medication for depression - failed to negotiate turn at intersection – car ran into apartment building – 3 passengers suffered serious injuries requiring surgery - mid-range objective seriousness - moral culpability high Rehabilitation – prior good character – strong subjective considerations
29.	Reddy (32) [2018] NSWCCA 212	s.52A(4)	PG (25%)	3y 5m NPP 2y	AA 3y 5m NPP 2y (backdated 4m to take into account period in residential rehabilitation)	Nil – criminal nor traffic	Utility collided with car in front on highway – both cars doing 110-120kph – intoxicated (nearly twice high threshold) – period of erratic driving – length of journey Significant alcohol problem – otherwise good character – remorse – residential rehabilitation since offence

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30.	Lawson (20) [2018] NSWCCA 215	s.52A(4) Fail to stop – [s52AB(2)]	PG (25%)	<u>Indicative</u> 3y 6m 18m <u>Aggregate</u> 4y NPP 2y 6m	AD	AOABH, driving offences	Excessive speeding in breakdown lane on highway – overtaking vehicles on inside – crossed over to Lane 2 causing collision with victim's vehicle – victim suffered severe catastrophic ongoing injuries Mental health issues - paranoid schizophrenia - driving to some degree caused by offender's delusional state – smoking cannabis
31.	McGonigle (24) [2020] NSWCCA 84	s.52A(4) s.51B(1) dangerous driving during police pursuit	PG (25%)	<u>Indicative</u> 3y 9m 12m <u>Aggregate:</u> 4y 3m NPP 2y 3m	AD	nil criminal record – four speeding infringements	Irish national driving home with male friend after drinking at hotel – veered in front of police car then sped off to avoid being stopped – drove speeding over 8km before missing bend and rolling car – friend suffered serious injuries – blood alcohol level 0.155-0.180 - high degree of moral culpability Prior good character – deep remorse at injury to friend – good prospects of rehabilitation – unlikely to re-offend
32.	Kelley (23) [2021] NSWCCA 173	s.52A(4) s.166 certificate 2 x Assault	PG (25%)	3y 4m NPP 2y	AD	Limited	Female - drove at high excessive speed with victim (partner) in passenger seat – had been arguing with and assaulted victim just prior to incident - collided into tree – victim suffered brain injury - very serious objective criminality – danger to other vehicles. Psychiatric issues – paranoia, anxiety, depression.
33.	Pearce (23) [2022] NSWCCA 68	s.52A(4) Sched: 1 offence	PG	6y NPP 3y 9m	AD	Driving under influence, drive disqualified, drive suspended	Victim suffered severe brain injury - vehicle travelling in excess of 200km/h with victim / friend as unrestrained passenger, ejected from seat through window of rear windscreen. Remorse – employed. CCA: substitute period of disqualification to 1y 4m (in lieu of 5y) commencing when applicant released on parole given applicant's maturity and willingness to pursue productive life
34.	Kljaic [2023] NSWCCA 225	s.52A(4) s 53	PG	<u>Indicative</u> 3y 9m 12m <u>Aggregate</u> 4y 6m NPP 2y 8m	AD		Facts not stated.

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	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
35.	Flentjar (21) [2023] NSWCCA 303	Engage police pursuit Drive disqual Engage police pursuit s.52A(4) Fail to stop Drive disqual Assault police Sched: 3 offences 2 offences	PG (25%)	<u>Indicative</u> 1y 6m 9m 1y 10m 3y 4m 9m 9m 4m <u>Aggregate:</u> 5y NPP 3y	AD	Lengthy including similar offences – breached parole	Offences committed on two separate occasions – police pursuit commenced after offender recorded speeding in uninsured and unregistered car with incorrect plates – disqualified – reached speeds up to 185kph manoeuvring around traffic – pursuit called off – several weeks later drove off in friend's car without permission – pursuit commenced when car recorded speeding 130-140kph in 100kph zone – offender increased speed and drove on incorrect side of road – pursuit ceased then recommenced further down highway – collided with car at intersection causing pelvic fracture to driver – kicked pursuing police officer – gross breach of use of motor vehicle and high degree of moral culpability – number of people placed at risk – intoxicated – aggressive and erratic driving – s.52A(4) at mid-range Desperately sad background reduced moral capability – indigenous - exposed to drug use, violence and incarceration of parent – little education and no employment – juvenile detention from early age – sexual abuse – institutionalisation – no support in rehabilitation – multiple psychiatric and intellectual deficits On appeal: no error in application of principles of deterrence

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