

Illegal Road Racing and its Legal Implications

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This is an edited version of a report of a Swiss Federal Court decision, written in German and translated by ACRS member Max Pallavicini.

Introduction

The following description deals with a road crash resulting from a race between two young drivers. The crash led to the deaths of two teenage pedestrians. The resulting court case was of particular interest in that it clarified issues regarding the extent of the responsibilities of drivers involved in road racing.

The Accident

Driver A drove on 3 September 1999 at 10.50 pm in his VW Corrado car in the direction of the town of Gelfingen. A second VW Corrado, driven by Driver B caught up with him at a roundabout. Each driver had a passenger.

Driver A felt provoked by Driver B, who followed him closely. He therefore accelerated and drove at excessive speed in the direction of Gelfingen. Driver B responded by tail-gating him at a distance of 1.5 to 4 m. After passing through the village of Baldegg Driver B overtook Driver A



and some other vehicles at a speed of 100 – 140 kph. Driver A took up this challenge and on the straight road at the entrance to Gelfingen he commenced to overtake Driver B. Both drivers raced each other at a close distance and even drove side by side at between 120 and 140 kph into the town, with Driver A in the oncoming lane.

Towards the end of his passing manoeuvre, Driver A commenced to re-enter the correct traffic lane ahead of Driver B. However, he lost control and went into a swerve. His car went into a spin and collided several times with a wall on the wrong side of the road. Finally, the car collided with two pedestrians on the footpath and catapulted them about 30 m ahead, causing fatal injuries. During the collisions with the wall the car's bonnet was flung open, and this may somehow have contributed to the great distance the pedestrians were propelled forward.

Driver B, meanwhile, slightly reduced his speed after entering the town and braked when he saw Driver A's car swerve. On rounding the bend and seeing that Driver A had crashed, he reduced his speed further to 20-30 kph and continued without stopping at the accident scene. Driver B was later arrested in a nearby district.

Expert Witness

A traffic specialist testified that the speed of Driver A's vehicle at the time it started to swerve was approximately 130 kph. During impact with the wall, the entire rear axle of the car had been torn away. The entire distance the car travelled, from the first pressure imprint of its left front wheel to its final position was 143 m.

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State Prosecutor

Because there was suspicion that Drivers A and B had been involved in a road race, the Prosecutor and Coroner decided to investigate the case in accordance with the principle that this was, ultimately, a planned homicide. They decided that it would be inappropriate to try the case under the usual indictment of 'culpable driving occasioning death', which normally resulted in a custodial sentence of 10 to 15 months. Supported by the Coroner's findings, the Prosecutor assessed the senseless speeding amounting to a contest of driver dexterity. He warranted the case should be considered at the same level as that for homicide offences committed with dangerous weapons. He applied at the Criminal Court of Lucerne for sentences of 6 and 7 years to be applied to Drivers A and B respectively.

The Sentence

The Lucerne Criminal Court, in March 2002, declared Driver A guilty on the following counts:

- * Multiple eventual intentional manslaughter
- * Incompetent handling of the vehicle
- * Multiple contravention of the legal and displayed maximum speed limit within and outside the urban areas as well as not adapting the speed to the road and traffic conditions
- Multiple tail-gaiting when driving in a formation; and
- Multiple unlawful overtaking.

Driver B was also found guilty on similar charges except for the incompetent handling charge and with the additional charge of “A conduct contrary to the legal norms in a traffic accident.” Both drivers were given custodial sentences of six and a half years.

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Manslaughter with Special Ultimate Intent

Both men appealed to the Lucerne Supreme Court in June 2003. The Court dealt in great detail with ‘Specific Manslaughter’ and ‘Ultimate Intent’. The point at issue was whether Drivers A and B could be considered responsible

for the pedestrian deaths when they were merely involved in a road race. The Supreme Court decided that they could be held responsible, because they should have foreseen that a crash was a likely or possible outcome of the race and this could involve other parties. By participating in the race, both drivers were acquiescing to the possibility of dangerous consequences, such as actually occurred.

Appeal to the Federal High Court

Driver A argued that the Supreme Court should not have relied on the expert traffic opinion. He argued that he had not swerved because of his high speed, but for unexplained, probably technical reasons. Driver B argued that there was no proof that he had been involved in a road race and that he had not caused Driver A to swerve. The Federal Court, however, rejected their appeal, arguing that they had been racing and should have recognised that there was a high probability that one or both of them would crash. The drivers had acted with reckless indifference to the possible consequences of their actions. Driver B was equally guilty, because he had cooperated with Driver A in creating the conditions that caused Driver A to crash and kill two people.

The Future

Based on the decision of the Swiss Federal High Court, a general strengthening of the penalties with reference to speeding offences is likely.

Policies of the Australasian College of Road Safety

by Ken Smith RRSP, ACRS Fellow

Pedestrians

ACRS Policy Position

ACRS supports measures that take full consideration of the needs and desires of all road users in urban centres, local streets, shopping and community centres, and that improve urban amenity by separating pedestrians and vehicles while recognising the rights of both groups to urban space and freedom of movement.

The needs of elderly and young pedestrians, both of which are over-represented in pedestrian casualties, deserve special consideration.

Objective

To reduce the risk to adult and child pedestrians posed by the movement of motorised vehicles.

Discussion

Pedestrians are vulnerable road users and comprise the largest

single road user group. Within resource constraints, the management of pedestrian movement should be aimed at maximising safety without undue infringement on attractive environments and high-quality urban design. Because of the vulnerability of pedestrians, for maximum safety the pedestrian network should be separated from the motorised transport system. However, it must be integrated with it. Pedestrians must therefore be able to cross the road in some way to maintain the coverage and continuity of the network.

Pedestrian safety is a complex issue because of the highly variable characteristics of walkers and their behaviours and attitudes. It is well recognised, for example, that pedestrians will attempt to minimise walking distances by taking short cuts. Some traffic engineers, however, tend to consider pedestrians as being analogous to controlled vehicles operating on a network consisting of footways, stairs, tunnels and so on.

ACRS considers that planning for all pedestrians has to take account of people with disabilities. People with impaired vision have difficulty picking up visual cues and need strong contrast and delineation between roadways and pedestrian areas. Wheelchair users have difficulty with uneven surfaces and steep slopes. The ability of young children to cope with traffic is extremely limited until the age of about 12 years. Older pedestrians are at particular risk. Not only do older pedestrians have a lower than average walking speed, they take longer to make decisions on crossing roads, and they are more vulnerable to injury if involved in a crash than other adult pedestrians.