



AUSTRALIAN ADVOCACY INSTITUTE

Case Study:
DPP v Phillip BALL

Plea

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**Originally adapted for the AAI by Professor George Hampel AM QC
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Case Study: *DPP v. Phillip Ball*

Instructions to participants

Analyse and prepare how this case may be dealt with for the defence and the prosecution on a plea of guilty to recklessly causing serious injury.

Consider how to present this plea

- What are the sentencing considerations?
- How do they relate to the facts?
- What case theory can be developed?
- How will the plea be best presented?

INSTRUCTIONS FOR PHILLIP BALL

At three quarter time, in the Grand Final of the interstate Football League between the Central Dingoes and the Southern Devils, the scores were level.

After first bounce, in the last quarter, the ball was kicked towards the Dingoes' goal. As the Devils' centre half forward, Paul Ford, was jogging back to his position, the Diggers' half back, Phillip Ball, glanced towards the umpire who was looking the other way, came up from behind Ford and with a round blow, knocked him out.

As a result, Ford received a fractured jaw and severe bruising to the nose. Play was stopped and Ford was taken to hospital, where he remained an in-patient for 3 days. He required surgery and his jaw was wired shut. It remained wired shut for 8 weeks. Upon removal of the wires his jaw has healed well but he continues to suffer from occasional pain and headaches. It is anticipated that the pain and headaches will continue to abate and there should be no ongoing problems.

The incident was seen by Sergeant Harris, who was a spectator and a local police officer. Ball was charged on summons with an offence under Section 33 of the Crimes Act of intentionally causing grievous bodily harm, which carries a maximum sentence of 25 years imprisonment.

At the first mention of the matter, Ball's solicitor indicated that Ball would be prepared to plead guilty to recklessly causing grievous bodily harm under section 35(2) of the Crimes Act, for which the penalty is maximum 10 years imprisonment. The solicitor said his instructions were that Ford called Ball "a black bastard". It was indicated by the prosecution that there would be a factual dispute about the claim that Ford had called Ball "a black bastard" before he was struck.

One week ago Ball's solicitor wrote to the DPP saying that he was instructed that Ball says that he heard the comment made by a player but accepts Ford's denial that it was he who made the racial slur.

The prosecution responded saying that there will not be a factual contest. The DPP was prepared to accept the Plea to recklessly causing grievous bodily harm and to withdraw the more serious charge.

Paul Ford's victim impact statement reveals that he is 25, married with 2 children, aged 2 & 5. As well as playing football, he is studying Physical Education to become a teacher, and works part-time as a Personal Trainer at a gym. As a result of his injury, he has had to give up his gym job and has missed a semester of his course. He still suffers occasional pain in the jaw and headaches. He hopes all this will pass. He would love to play football again however he is very worried he will be unable to get past what happened. He is worried that he will be constantly looking over his shoulder and not be able to focus on the game. He will be devastated if he can't play again.

Phillip Ball is 26 and has no previous convictions. He has had a spectacular football career, but has been suspended twice, for rough play. He is well liked and respected in the community. Letters from his referees confirm that he is employed as a part-time mechanic. He trains his old school senior football team.

Phillip understands that he has a short fuse on the football field. He sees this as the result of regular abusive racial comments which he experiences. He has also been subject to racially motivated violence in the past. He was the victim of a racially motivated bashing in which he ended up with a fractured cheekbone.

He was brought up by his mother, who was a member of the "stolen generation" and was taken into foster care. Phillip has never known his father. He is conscious of the abuse suffered by his mother and other members of his family. He received little guidance at home and had no paternal role model.

Phillip is single. He lives with and supports his ailing mother who suffers from cardiovascular disease that restricts her ability to get around. She is also required to attend doctors regularly. His mother also has the onset of dementia. Phillip looks after her and in particular is needed to get his mother to her various appointments. She is likely to forget her appointments if Phillip is not there to remind her and to take her. He is an only child and his mother has 2 brothers. While they live in the area they have shown little interest in helping his mother.

A specialist letter has been tendered confirming his mother's ill health and particularly noting that her attendance at the various doctor's appointments are essential otherwise her health may deteriorate significantly, causing the real risk of a heart attack and/or stroke.

As a result of this incident, Phillip has been suspended indefinitely by his club. He will have to find a full time job to keep up the rent on the house. He is concerned that he will not be able to resume his football career. He has asked his club to reinstate him and has begun an anger management course. He has attended 3 sessions of a 6 session course.

A pre-sentence report is available which reflects the facts stated above. Further it states that he needs a moderate level of intervention as a result of his anger management issues. There are a number of courses run by corrective services that would assist with anger management. Those courses are run in custody and out of custody. It was noted that he had already begun a course and appeared to be doing well.

The incident received widespread publicity in the Australian Media. It has been used as an example of "football thuggery" and has been cited in various campaigns designed to deal with such problems. There is strong press presence in court and there was a reference in the news last night to the need for stern penalties and the need to "clean up the game."

Apparently, the judge before whom this case is listed, is a keen football follower and was, about 3 years ago, a guest speaker at the League's annual dinner on the topic of violence by footballers both on and off the field.