

# **Robbery & Aggravated robbery**

*s 392 Criminal Code*

**From 1 January 2014**

## Glossary:

imp	imprisonment
susp	suspended
conc	concurrent
cum	cumulative
PG	plead guilty
Agg	aggravated
Burg	burglary
Sex Pen	sexual penetration without consent
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
Dep Lib	deprivation of liberty
Att	attempted
EFP	eligible for parole
TES	total effective sentence
ISO	intensive supervision order
PSO	pre-sentence order
CBO	community based order

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
6.	<p><i>Mamkin v The State of Western Australia</i></p> <p>[2017] WASCA 61</p> <p>Delivered 31/03/2017</p>	<p>18 yrs at time offending. 19 yrs at time sentencing.</p> <p>Convicted after PG (25% discount for cts 1 and 7).</p> <p>Current offending are the first convictions as an adult.</p> <p>Extensive prior criminal history as a juvenile, including sanctions of detention.</p> <p>On bail for cts 1-6 at time offending for ct 7.</p>	<p>Ct 1: Armed robbery. Ct 2: Stealing. Ct 3: Agg robbery. Ct 4: Att agg robbery. Ct 5: Agg burg. Ct 6: Steal motor vehicle. Ct 7: Agg armed robbery.</p> <p><u>Ct 1</u> The victim parked his car at a shopping centre and remained in the driver's seat. Mamkin approached the victim, produced a long knife and told him, 'Don't do anything or I'm going to stab you'. Mamkin got into the car, behind the victim, and asked what he had on him. The victim handed a mobile and \$50 cash to Mamkin.</p> <p>On Mamkin's instruction, the victim drove to an ATM to withdraw cash. While holding the knife against the victim's ribs, Mamkin demanded the victim's PIN for his bankcard and said, 'If you lie I will stab you'.</p> <p>On Mamkin's instructions, the victim drove to a cul-de-sac and got out of the car. Mamkin patted the victim's pockets and took his car keys and house keys. Mamkin fled in the car which contained the victim's property.</p> <p><u>Ct 2</u> On the same date as ct 1, Mamkin and his associates stole fuel to the value of \$76.46.</p>	<p>Ct 1: 4 yrs 9 mths imp (reduced from 7 yrs imp). Ct 2: 1 mth imp (conc). Ct 3: 12 mths imp (conc). Ct 4: 10 mths imp (conc). Ct 5: 2 yrs 6 mths imp (conc). Ct 6: 12 mths imp (conc). Ct 7: 5 yrs 3 mths imp (reduced from 8 yrs imp) (to commence 1 yr 7 mths after commencement of ct 1).</p> <p>TES 6 yrs 10 mths imp.</p> <p>EFP.</p> <p>Sentences on cts 1 and 7 reduced for PG and youth. Sentence on ct 7 also reduced for time in custody.</p> <p>Sentencing judge took into account PG, youth and cooperation with police (admissions to police) for cts 2-6.</p> <p>PSR indicated no real appreciation of the effect which Mamkin's conduct must have had on his victims, or a willingness or real capacity to deal with the</p>	<p>Dismissed.</p> <p>Appeal concerned totality and discount for cooperation.</p> <p>At [34] ...the appellant's admissions were not made as a consequence of genuine remorse or contrition. They did not involve the provision of useful information to the police... The admissions were made in confined parts of the video-recorded interview during which the appellant repeatedly, but unsuccessfully, endeavoured to mislead the police as to the truth about the serious offences in which he was involved as a principal offender.</p> <p>At [35] The appellant made no admissions of any significance concerning ct 1. His cooperation with the police when they</p>

			<p><u>Cts 3 and 4</u> On the same date as ct 1, Mamkin and his associates parked the stolen car behind the victims who were attempting to withdraw cash at an ATM. Mamkin approached the victims and said 'Do you want to pull some money out or get mobbed?'. Mamkin took a wallet from one victim. The other victim attempted to prevent Mamkin from taking the wallet and Mamkin punched the second victim to the face. A violent confrontation ensued and the victims escaped on foot.</p> <p><u>Cts 5 and 6</u> The following day, Mamkin entered the victim's house while the victim was asleep. He stole the victim's handbag which contained her wallet, car keys and the keys to a vault at her work. Mamkin then stole the victim's car.</p> <p><u>Ct 7</u> The victim was a taxi driver. On another date, Mamkin arranged for the victim to collect him from Bassendean. As Mamkin could not pay a deposit, the victim refused to drive him to his destination but offered to drive him, without charge, to a train station.</p> <p>As the victim drove around the corner, Mamkin produced a long knife and held it at the victim's throat. He threatened to kill the victim if he did not hand over his money, his mobile and the passcode for the mobile. The victim complied</p>	<p>issues which led to his offending.</p> <p>Sentencing judge commented that the current offences indicate a serious escalation in the level of violence involved in Mamkin's offending.</p> <p>No remorse or contrition.</p> <p>Very serious risk of re-offending.</p>	<p>searched his premises was insignificant. His insubstantial admissions and cooperation were not of any material weight for sentencing purposes. In any event, a different individual sentence for ct 1 should not have been imposed.</p> <p>At [36] His Honour did not state the discount he applied but his Honour was not bound to do so. In any event, a different sentence should not have been imposed for any of cts 2, 3 or 4.</p> <p>At [37] The appellant's overall offending was, no doubt, extremely serious... The offences involved some planning... The actual or threatened violence associated with the commission of cts 1 and 7 was significant. The victims must have feared for their lives. They</p>
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			<p>with those demands. His wallet contained \$450 cash.</p> <p>Mamkin's two associates approached the taxi, opened the door and told Mamkin to take the mobile and cash and get out of the taxi.</p>		<p>would have suffered emotional trauma... The victim of ct 7 was a taxi driver. People who work as taxi drivers are vulnerable to attacks of this kind.</p> <p>At [48] The egregious character of the appellant's offending, and the very serious risk that he will reoffend, reduced the extent to which he could be given credit in the sentencing process for his youth.</p>
5.	<p><b><i>Mogridge v The State of Western Australia</i></b></p> <p><b>[2016] WASCA 205</b></p> <p>Delivered 29/11/2016</p>	<p>30 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Subject to a SIO and CBO at time offending.</p> <p>Lengthy criminal history, including property offences and violent offences. Mogridge has breached every court order previously imposed upon him.</p>	<p><u>Indictment</u> 1 x Robbery.</p> <p><u>Breach of SIO</u> 1 x Burg. 2 x Burg with intent. 2 x Unlawful poss.</p> <p><u>Breach of CBO</u> 1 x Breach police order. 1 x Breach of protective bail condition. 1 x Damaging property. 1 x Disorderly conduct. 4 x Stealing.</p>	<p><u>Indictment</u> 3 yrs imp.</p> <p><u>Breach of SIO</u> Burg: 3 mths imp (cum). Burg with intent: 6 mths imp (cum). Burg with intent: 3 mths imp (cum). 2 x Unlawful poss: 3 mths imp each (conc).</p> <p><u>Breach of CBO</u> Breach police order: 3 mths imp (conc).</p>	<p>Dismissed – on papers.</p> <p>Appellant challenged individual sentence for the Robbery offence, totality, and sentencing judge's failure to state discount provided for PG.</p> <p>At [40] While the robbery offence committed by the appellant was not at the upper end of seriousness</p>

		<p>Deprived childhood; exposed to domestic violence and chronic illicit drug and alcohol abuse.</p> <p>Diagnosed schizophrenic, with multiple admissions to Graylands Hospital.</p> <p>Antisocial personality disorder.</p> <p>Illicit drug use.</p>	<p><u>Indictment</u> M entered a shop and stole an iPad and two bags belonging to the shop's owner (the victim). The victim's wife and 4 yr-old son were present. The victim tried to prevent M from leaving and during a struggle M punched the victim in the face. M dropped the stolen items and left.</p> <p><u>Breach SIO</u> M smashed the rear glass doors of an Indian restaurant and entered with others, but could not find anything to steal (burg with intent).</p> <p>M smashed a window of a pharmacy, entered and smashed an internal wall. Two co-offenders wanted to steal drugs and M assisted to receive \$50 (burg with intent).</p> <p>M was found in poss of property worth in excess of \$500 (unlawful poss).</p> <p>M forced entry to a shopping centre and stole 189 SIM cards valued at \$378 from a kiosk (burg). M was found by police in poss of the SIM cards and other items (unlawful poss).</p> <p><u>Breach CBO</u> After the burg on the Indian restaurant subject to SIO, M smashed the glass panel to the doors (damaging property).</p> <p>M smashed a car window and stole property</p>	<p>Breach bail: no sentence. Damaging property: 6 mths imp (conc). Disorderly conduct: \$250 fine. 3 x Stealing: 3 mths imp each (conc). 1 x Stealing: no sentence (s 11).</p> <p>TES 4 yrs imp; \$250 fine.</p> <p>EFP.</p> <p>Sentences for breach of CBO made conc for totality reasons.</p> <p>Sentencing judge found that Mogridge's mental illness was not at the root of his offending; illicit drug use was the cause of offending.</p> <p>Not a good vehicle for general deterrence because of his mental illness.</p> <p>Very high risk of reoffending.</p> <p>No remorse; inability to accept responsibility for</p>	<p>of offences of robbery, it was not at the lower end of the scale and involved considerable criminality. The appellant used actual violence upon the victim to steal the iPad and the two bags. The offence was committed in the presence of the victim's wife and young child... The appellant was, at the time, subject to the CBO and the SIO. Specific deterrence and the need to provide public protection were matters of importance.</p> <p>At [41] The appellant ... has a very long and serious criminal history... he suffers from a significant mental illness, but that illness was not causative of his offending, nor will it result in imp being more onerous for him than in the ordinary case. The appellant is not motivated to deal</p>
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			<p>valued at approx. \$700 (stealing).</p> <p>M yelled obscenities and threats at his mother after being issued with a 72-hr police order prohibiting him from entering her house or approaching within 100 m of her (disorderly conduct). M was arrested and released on protective bail. He later hid in his mother's unit in breach of the police order and protective bail conditions (breach offences).</p> <p>M stole property valued at \$50 from a car (stealing). M returned to the same address and stole \$50 in change from another car (stealing).</p> <p>M was charged with stealing for the stolen SIM cards he took in the burg subject to SIO (stealing).</p>	offending behaviour.	<p>with his illicit drug use, which is the real driver of his offending, and he has no insight into the effects that his offending has on his victims. His prospects for rehabilitation appear to be very poor and he poses a very high risk of reoffending.</p> <p>At [45] Her Honour erred by overlooking to state the extent of the reduction for the PG. However, in this case, the error is not material. It is not reasonably arguable, having regard to all relevant sentencing considerations (including the PG), that different individual sentences, or a different TES should have been imposed...</p>
4.	<p><i>Hunter-Aragu v The State of Western Australia</i></p> <p>[2015] WASCA 80</p>	<p>20 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Irrelevant prior criminal</p>	<p>Ct 1: Criminal damage.</p> <p>Ct 2: Unlawful wounding.</p> <p>Ct 3: Agg robbery.</p> <p>Ct 4: GBH.</p>	<p>Ct 1: 6 mths imp (conc).</p> <p>Ct 2: 6 mths imp.</p> <p>Ct 3: 2 yrs 6 mths imp (cum).</p> <p>Ct 4: 4 yrs 3 mths imp (cum).</p>	<p>Dismissed.</p> <p>At [55] ...the offence of unlawfully doing GBH against Mr Gabriel was</p>

	Delivered 29/04/2015	history.  Supportive family.	<p>The appellant behaved aggressively outside of a nightclub. He demanded money and mobile phones from other people.</p> <p>He became involved in a physical altercation with Lyle. Lyle went to a taxi and sat in the front passenger seat. The appellant threw a rock at the taxi, smashing the window (ct 1) and causing a wound to Lyle's left arm (ct 2).</p> <p>The appellant then sought to confront Gabriel. Gabriel raised his hands, to indicate that he did not want a confrontation, and backed away. The appellant pursued him. Gabriel fell to the ground and the appellant kicked him in the chest. The appellant stomped on Gabriel's head rendering Gabriel unconscious and causing a serious brain injury. The appellant dragged Gabriel about 15 metres, robbed him of his mobile phone and \$100 cash and abandoned him. Gabriel was found a few hours later, still unconscious.</p> <p>Offending caused devastating adverse consequences for Gabriel, including problems walking, talking and poor vision and balance.</p>	<p>TES 7 yrs 3 mths imp. EFP.</p> <p>It was an extremely serious example of gratuitous violence.</p> <p>Serious permanent consequences for Gabriel; impacted seriously on Gabriel's partner.</p> <p>Remorse; motivated to rehabilitate.</p>	<p>extremely serious...the offence of robbery against Mr Gabriel was serious... the individual sentence for robbery was high but nevertheless within the appropriate sentencing range.</p>
3.	<p><i>Schischka v The State of Western Australia</i></p> <p>[2015] WASCA 15</p> <p>Delivered</p>	<p>24 yrs at time offending.</p> <p>Convicted after PG.</p> <p>Minor prior criminal history.</p>	<p>Ct 1: Agg robbery. Ct 2: Agg robbery.</p> <p>At 4.00am on 17 May 2012, the appellant was heavily intoxicated and had an argument with his girlfriend. He left the house with the co-offender (identity unknown) to cool off.</p>	<p>Ct 1: 2 yrs imp. Ct 2: 1 yr imp (cum).</p> <p>TES 3 yrs imp. EFP.</p>	<p>Dismissed.</p> <p>At [26] In this case the two offences were closely related in point of time. However, they were separate and</p>

	21/01/2015	<p>Good upbringing; regular employment.</p> <p>Alcohol abuse problem; sought treatment prior to sentencing.</p>	<p>The appellant and co-offender were walking down the middle of the road causing the victim to stop his car. The appellant and co-offender approached the victim's door and asked for a cigarette lighter. The victim gave a lighter to the co-offender. The appellant opened the driver's door and repeatedly punched the victim to the face while demanding his wallet. While the co-offender punched the victim from the passenger's side, the appellant removed the wallet from the victim's pocket. They both left.</p> <p>The victim remained in his car and called police. While he was on the phone, the appellant returned and punched the victim to the face through the open driver's window causing him to drop the phone. The co-offender opened the passenger door, grabbed the victim by the hands and demanded he hand over the phone. The victim found the phone and handed it over. The appellant continued to punch the victim. They both walked away.</p> <p>The victim suffered bodily harm.</p> <p>The appellant admitted assaulting the victim but stated he could not remember taking any property.</p>	<p>No finding was made on whether the appellant stole the phone to prevent the victim from contacting police.</p> <p>Previous good character; relative youth; remorseful; victim empathy; steps already taken to rehabilitate; good prospects of rehabilitation.</p>	<p>distinct transactions and constituted separated and distinct violations of the victim's interests... It is reasonable to infer that the victim suffered further harm as a consequence of the second attack upon him, not least because the sense of relief which he might have been expected to feel upon the conclusions of the first attack was destroyed by the commencement of the second attack and because he was deprived of the capacity to summon the assistance which he required by the theft of his mobile phone notwithstanding that Mr Schischka was not motivated by that intention.</p> <p>At [30] The assaults perpetrated by Mr Schischka were brutal, unprovoked and</p>
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				<p>persistent, in the sense that the victim was repeatedly punched by Mr Schischka on two separate occasions.</p> <p>At [62] The primary sentencing factors in relation to agg robbery, especially where the victim suffers bodily harm, are appropriate punishment and personal and general deterrence. Ordinarily, as a matter of fact, a substantial penalty must be imposed. However, agg robberies can be and are committed in a wide range of circumstances.</p> <p>At [63] In recent years the sentencing range for agg robbery has been 'firmed up', especially where the victim has been violently assaulted, in recognition of the prevalence and seriousness of the offending.</p>
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<p>2.</p>	<p><i>QJS v The State of Western Australia</i></p> <p><b>[2015] WASCA 9</b></p> <p>Delivered 15/01/2015</p>	<p>20 yrs at time of most offending.</p> <p>Conviction after PG.</p> <p>Offending breached ISO.</p> <p>Significant criminal history, including convictions for stealing, burg, breaches of bail, stealing motor vehicle and common assault.</p> <p>Difficult upbringing; attended numerous schools; never had significant employment.</p> <p>Significant substance abuse problem.</p> <p>Offending on indictment occurred shortly after the Department of Child Protection took the appellant's young daughters into their care.</p>	<p><u>Indictment</u> Ct 1: Agg burg (dwelling). Ct 2: Steal motor vehicle. Ct 3: Agg armed robbery. Ct 4: Accessory after the fact to agg armed robbery. Ct 5: Agg armed robbery. Ct 6: Agg robbery.</p> <p><u>Section 32 notice</u> 18 charges.</p> <p><u>Indictment</u> <u>Ct 1 -2:</u> At about 3.50am on 17 December 2013 the appellant went to a house in company with a co-offender. He forced the garage door open and used an internal door to access the kitchen. He took a car key from the kitchen and used the keys to steal a car from the garage.</p> <p><u>Ct 3:</u> Approx. one hour later, the appellant and co-offender saw a woman walking along the street. They formed an intention to snatch her bag. The co-offender threatened the victim with a screwdriver. He pushed the tip into her cheek and demanded her handbag. The victim gave her handbag to the co-offender. The appellant drove them away.</p> <p><u>Ct 4:</u></p>	<p><u>Indictment</u> Ct 1: 1 yr 9 mths imp (conc). Ct 2: 4 mths imp (conc) Ct 3: 3 yrs 3 mths imp (cum). Ct 4: 1 yr 4 mths imp (conc). Ct 5: 3 yrs 3 mths imp (conc). Ct 6: 2 yrs 4 mths imp (conc).</p> <p><u>Section 32 notice</u> The appellant received various imp terms for various charges, 2 yrs 9 mths of which was ordered to be served cum.</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Cooperated with police by giving names of co-offenders.</p> <p>Limited insight into offending and effect on victims; remorse; victim empathy.</p>	<p>Dismissed – on papers.</p> <p>At [35] The rationale for treating offending whilst on bail or parole as being an aggravating factor applies equally where a person commits offences whilst on some other form of conditional release, such as an ISO... The commission of an offence whilst on an ISO not only exposes the offender to resentencing for the original offence, it is a factor relevant to the sentencing for the breaching offences.</p> <p>At [50] The offences contained on the indictment were serious offences of their type.</p>
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		<p>At about 3.30pm on the same day the appellant and a co-offender were driving through a shopping centre car park. The co-offender decided to steal the handbag of a passing shopper. The co-offender got out of the car and grabbed the victim's handbag. There was a struggle until the co-offender raised a box cutter knife above the victim's head causing her to let go. The co-offender got back in the car and the appellant drove the co-offender away in order to help him escape.</p> <p><u>Ct 5:</u> About 30 minutes later, the appellant and a co-offender formed an intention to steal a handbag from a shopper at another shopping centre car park. The appellant stopped the car behind the victim who was seated in her parked car. The co-offender opened the victim's car door and, while brandishing a screwdriver, demanded her handbag. The victim handed her bag to the co-offender. The appellant drove them away.</p> <p><u>Ct 6:</u> At about 9.30am on 19 December 2013, the appellant and co-offender formed an intention to steal a handbag from a shopper at a shopping centre car park. The appellant stopped the car in close proximity to the victim. The co-offender got out and pushed the victim from behind causing her to stumble. The co-offender attempted to steal her handbag dragging her as he did so. After a</p>		
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			<p>struggle he obtained poss of the bag and ran to the car.</p> <p>The appellant was arrested on the same day. He made admissions to the offences, but denied entering the house in ct 1.</p> <p><u>Section 32 Notice</u> Between 8 August 2012 and 19 December 2013 the appellant committed multiple offences including agg burg on a liquor shop, breach of bail, stealing, wilful damage, trespass, steal motor vehicle, dangerous driving to escape pursuit, traffic offences and poss of a prohibited drug. The appellant made admissions to the section 32 offences when interviewed.</p>		
1.	<p><b><i>Barnden v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 161</b></p> <p>Delivered 01/09/2014</p>	<p>21 yrs at time offending &amp; sentencing.</p> <p>Convicted after PG.</p> <p>Prior criminal record including aobh, possessing things for applying graffiti and breach of bail.</p> <p>Dysfunctional upbringing.</p> <p>Left school at year 9; returned and completed year 10.</p>	<p><u>Indictment</u> Ct 1: Agg robbery. Ct 2: Stealing. Ct 3: Stealing. Ct 4: Stealing. Ct 5: Stealing. Ct 6: Stealing. Ct 7: Stealing. Ct 8: Agg robbery.</p> <p><u>Section 32</u> Ct 1: Reckless driving. Ct 2: No MDL.</p> <p><u>Indictment</u> The appellant had consumed a substantial quantity</p>	<p><u>Indictment</u> Ct 1: 12 mths imp (cum). Ct 2: 3 mths imp (conc). Ct 3: 3 mths imp (conc). Ct 4: 3 mths imp (conc). Ct 5: 3 mths imp (conc). Ct 6: 3 mths imp (conc). Ct 7: 3 mths imp (conc). Ct 8: 20 mths imp (cum).</p> <p><u>Section 32</u> Ct 1: 4mths imp (cum). Ct 2: 3 mths imp (conc).</p> <p>TES 3 yrs imp.</p>	<p>Appeal dismissed.</p> <p>At [55] The critical question is whether disparity or lack of disparity in the sentencing outcome is capable of giving rise to a legitimate or justifiable sense of grievance, or to give the appearance in the mind of an objective observer that justice has not been done.</p> <p>At [63] The appellant's</p>

		<p>Occasionally employed.</p> <p>Long history of drug and alcohol abuse.</p> <p>Made some effort towards rehabilitation.</p> <p>Suffers anxiety and depression.</p> <p>Immature for his years.</p> <p>Failed to attend two scheduled PSR interviews and engage with a psychologist.</p> <p><u>Co-offenders</u> Peach – early PG - sentenced to a total of 3 yrs imp. EFP.</p> <p>Clark – early PG – sentenced to a total of 2 yrs 8 mths imp. EFP.</p> <p>WAC – counsel for appellant disclaimed any complaint about parity as between the appellant and WAC.</p>	<p>of alcohol with three co-offenders. The appellant drove his 3 co-offenders around Esperance. Their common objective was to find someone suitable to rob.</p> <p><u>Ct 8:</u> The first victim was a 30 yr old backpacker who was walking along a footpath. The appellant stopped the vehicle and his co-offenders alighted, surrounded the victim and demanded money. The victim refused and was punched in the back of the head. The force knocked him to the ground and his property was stolen. The co-offenders were wearing hoods and sunglasses in an attempt to conceal their identities.</p> <p><u>Ct 1:</u> The appellant and co-offenders returned to a house in Esperance and continued drinking alcohol. The appellant then drove his 3 co-offenders around again. They saw the victim, a 17 yr old driving and followed him home. As the victim and his 16 yr old brother were about to alight from the vehicle, the co-offenders surrounded them and demanded money. The victim's wallet and mobile were wrestled from the victim's grasp.</p> <p><u>Cts 2-7</u> Later in the day the appellant and his co-offenders went to a caravan park on a number of occasions. They stole camping equipment and personal</p>	<p>EFP.</p> <p>Made full admissions.</p> <p>Remorse.</p> <p>High risk of re-offending.</p>	<p>role as the 'getaway driver' was central to the commission of the offences.</p> <p>At [64] Although the appellant may not have initiated the offending, or been directly involved in confronting the victims, his level of culpability was not materially less than that of his co-offenders.</p>
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items.

Section 32

Whilst driving, the appellant did a burn out which was witnessed by police. Police activated the emergency lights and attempted to stop the vehicle. The appellant refused to stop, accelerated and attempted to evade police. At one point he braked heavily. Subsequently the police vehicle collided with the rear of his vehicle. The appellant ran from the vehicle leaving his co-offenders inside with the vehicle rolling down a hill. At the time his licence was suspended.