

SUPREME COURT OF QUEENSLAND

CITATION: *R v Leskovar* [2004] QCA 312

PARTIES: **R**
v
LESKOVAR, Mark William
(appellant)

FILE NO/S: CA No 388 of 2003
DC No 110 of 2003

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Beenleigh

DELIVERED ON: 27 August 2004

DELIVERED AT: Brisbane

HEARING DATE: 9 July 2004

JUDGES: Davies, Williams and Jerrard JJA
Separate reasons for judgment of each member of the Court,
each concurring with the order made

ORDER: **Appeal against conviction dismissed**

CATCHWORDS: CRIMINAL LAW - PARTICULAR OFFENCES -
DRIVING OFFENCES - DANGEROUS DRIVING -
GENERALLY - where the appellant was convicted of
dangerous driving causing death and appeals against that
conviction - where it was alleged that the appellant drove on
the wrong side of the road and failed to keep a proper lookout
- whether the appeal against conviction should be allowed

COUNSEL: Appellant appeared on his own behalf
P J Feeney for respondent

SOLICITORS: Appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

- [1] **DAVIES JA:** The appellant was convicted of dangerous driving causing death after a trial in the District Court on 14 November 2003. He appeals against that conviction. The dangerous driving alleged by the Crown was driving on the wrong side of the road and failing to keep a proper lookout.
- [2] Central to the Crown case was the question whether, as alleged by it, the appellant was driving on the wrong side of the road when he collided with the deceased pedestrian. The road in question was at a slight downward incline in the appellant's direction of travel and at a slight curve to the right. The collision between the

appellant's vehicle and the deceased pedestrian occurred at about midnight on 16 November 1999. There was no other relevant traffic on the road which was Peachey Road, Ormeau.

- [3] The deceased and a companion Mr Axton were walking home along Peachey Road from a friend's place to the deceased's house. The deceased was wearing a white T-shirt. According to Axton any cars travelling in the same direction as they were walking would have approached them from behind on their side of the road. He said that they were walking side by side, Axton being closer to the kerb than the deceased; that he was only a foot or a foot and a half from the kerb and that the deceased was a further foot away from him; and that he saw the appellant's car coming towards them on its incorrect side. It struck the deceased.
- [4] Damage to the appellant's car was on its front passenger side, primarily the grille, headlight and windscreen on that side. Police who attended the scene saw two skid marks running from the front tyres backwards. These were wholly on the appellant's incorrect side of the road and running approximately parallel with the line of the roadway. Expert evidence was given that the skid marks were made by the wheels locking on braking and that they would have continued in a straight line from the direction of travel of the appellant's vehicle immediately prior to braking. Allowing for reaction time, this would have placed the appellant's car wholly on its incorrect side of the road at impact. None of the police evidence appears to have been challenged or at least seriously challenged.
- [5] Perhaps surprisingly there was an eyewitness to the accident. Mrs McGinley who lived on Peachey Road heard her dog growl and went out to a glass door which looked onto Peachey Road. She saw two men, who were plainly the deceased and Axton, walking in the gravel beside Peachey Road. They were laughing and nudging each other. She went outside to the front of her house and continued to watch their progress. One gave the other a piggy back and the person carrying tripped over and they fell down. They laughed. They were not on the bitumen surface when this occurred. Shortly after this they got up from the ground and walked onto the bitumen. They walked shoulder to shoulder with one more or less on the kerb and the other right next to him. They did not move further onto the road before the collision. She then saw the headlights of the appellant's car which appeared to her to be on its incorrect side and she saw the collision. Thus Mrs McGinley's evidence corroborates that of Axton.
- [6] There was evidence that both the deceased and Axton were inebriated at the time of the collision. However on the evidence which I have related so far that was irrelevant. They were at all times, on the evidence of Axton and Mrs McGinley, supported as it was by the skid marks, walking on the appellant's incorrect side of the road.
- [7] The evidence of the appellant was inconsistent with that of Mr Axton and Mrs McGinley and the only reasonable inference to be drawn from the evidence of the skid marks and of the police expert was that, prior to the collision, the appellant was driving on his incorrect side. He said that he was at all relevant times on his correct side of the road and that the deceased was walking on his, the appellant's, correct side of the road.

- [8] The jury were, in my opinion, fully justified in accepting the evidence of Axton, Mrs McGinley and the police in concluding, as they must have, that the collision occurred whilst the appellant was travelling on his incorrect side of the road. And they were entitled to reject the evidence of the appellant to the contrary.
- [9] They were also justified in concluding, in my opinion, that the appellant failed to keep a proper lookout. There were no restrictions in his line of vision. The deceased's white T-shirt should have been plainly visible from some distance. No credible reason was suggested why he did not see the deceased and Axton before he did, which appears to have been at the point of collision.
- [10] There is, in my opinion, no substance in this appeal and I would dismiss it.
- [11] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of Davies JA and there is nothing I wish to add thereto. I agree with all that is said therein and with the order proposed.
- [12] **JERRARD JA:** In this appeal I have read the reasons for judgment and order proposed by Davies JA and respectfully agree with those reasons and order.