

SUPREME COURT OF QUEENSLAND

CITATION: *R v Muller* [2015] QCA 49

PARTIES: **R**
v
MULLER, Joshua Vincent
(appellant)

FILE NO/S: CA No 105 of 2014
DC No 77 of 2013

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Hervey Bay

DELIVERED ON: 10 April 2015

DELIVERED AT: Brisbane

HEARING DATE: 28 November 2014

JUDGES: Gotterson and Morrison JJA and Dalton J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION – VERDICT UNSAFE AND UNSATISFACTORY – where the appellant was convicted for dangerous operation of a vehicle, causing death or grievous bodily harm, whilst adversely affected by an intoxicating substance, namely alcohol – where the appellant was driving a LandCruiser which struck another person – where there were a number of witnesses – where there were inconsistent accounts of witnesses – whether it was open upon the whole of the evidence for the jury to be satisfied beyond a reasonable doubt that the appellant was guilty of the offence with which he was charged – whether the verdict was unsafe and unsatisfactory

M v The Queen (1994) 181 CLR 487; [1994] HCA 63, applied

COUNSEL: The appellant appeared on his own behalf
B J Power for the respondent

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

- [1] **GOTTERSON JA:** I agree with the order proposed by Morrison JA and with the reasons given by his Honour.
- [2] **MORRISON JA:** This is an appeal against a conviction for dangerous operation of a vehicle, causing death or grievous bodily harm, whilst adversely affected by an intoxicating substance, namely alcohol. The appellant was convicted on 28 March 2014 after a three day trial. The sole ground of the appeal is that the verdict was unsafe and unsatisfactory.
- [3] The events concerned the manner in which the appellant drove a LandCruiser in the general vicinity of a boat ramp at River Heads. Several men were fishing at the boat ramp and during the course of the driving one of the fishermen, Mr Martin, was struck by the LandCruiser and sustained injuries to his head, arm and foot. The intoxicating substance was alcohol, the evidence being that the appellant had a blood alcohol concentration of 0.199 per cent some two and a half hours after the incident.

Particulars of the charge

- [4] I will turn shortly to the evidence adduced at the trial, but the particulars of the charge were:¹
- (a) that the appellant drove his car at River Heads dangerously (and so caused grievous bodily harm to Matthew Adam Martin) started from the point in time that the appellant drove down the boat ramp and continued up to the point his car stalled;
 - (b) the appellant drove the LandCruiser down the boat ramp, in a forward direction, and ran over the fishing gear of the men; the appellant reversed away from the boat ramp, doing a burnout in the process;
 - (c) after driving around the car park and parking on top of a retaining wall, the appellant drove the LandCruiser over the wall, nearly clipping Mr Martin as he did so;
 - (d) the appellant drove the LandCruiser directly towards Mr Burrows and Mr Dyball as they stood near the toilet block;
 - (e) the appellant drove the LandCruiser at a covered area which contained a table and seats, stopping very close to the people congregated under it;
 - (f) the appellant drove the LandCruiser around the car park, across a grassed area, and drove directly at Mr Burrows, who stood in front of a tree; Mr Burrows moved out of the path of the LandCruiser, but the LandCruiser drove into the tree, causing it to be uprooted;
 - (g) the appellant drove the LandCruiser at Mr Martin and struck him, causing him to fall to the ground. The LandCruiser drove over Mr Martin's head, arm and foot; Mr Martin's left foot was trapped under the back tyre of the LandCruiser; the appellant accelerated heavily whilst Mr Martin's foot was trapped under the LandCruiser;
 - (h) the appellant drove the LandCruiser at Mr Martin as he stood at the side of the truck; Mr Martin got out of the way but the LandCruiser struck the truck at the point at which Mr Martin had stood;

¹ AB 261.

- (i) the appellant drove the LandCruiser through a garden area towards Mr Martin;
 - (j) the appellant was intoxicated at the time of the driving, represented by a BAC of 0.199 per cent some time later; and
 - (k) the appellant drove deliberately, recklessly and intentionally at people and things in the car park.
- [5] As will be seen the evidence at the trial referred to the appellant's manner of driving at an earlier point from when he drove down the boat ramp. Whilst that evidence was referred to in the summing up by the Crown and the defence, that was for the purpose of context, each acknowledging that the relevant driving commenced at the point where the LandCruiser was on the boat ramp. It is treated the same way in these reasons.

Admissions

- [6] Formal admissions were made which obviated the need to prove certain of the facts, as follows:²
1. that between 11.00 pm on 12 November 2012, and 1.00 am the next morning, the appellant drove a Toyota LandCruiser;
 2. the LandCruiser was operating in a satisfactory condition;
 3. that at 2.35 am on 13 November, the appellant's blood alcohol concentration was 0.199 per cent;
 4. at some time between 11.00 pm and 1.00 am Mr Martin suffered skin loss and a deep abrasion to the lateral left ankle, exposing underlying muscle and bone;
 5. the injury was treated surgically on 16 November, which involved re-grafting muscles from the surface of the foot over the injury, overlying the muscle with a skin graft; and
 6. the injury constituted grievous bodily harm.
- [7] The admission as to the blood alcohol concentration provided a solid platform for the jury to accept that the appellant was adversely affected at the time of the offence. The reading of 0.199 was taken some two hours or more after the events. The appellant was only 19 at the time. Notwithstanding the suggestions of the appellant's friend, Mr Pinkerton, to the contrary, it was open for the jury to accept that the appellant was adversely affected at the time of the offence.

The witnesses

- [8] The witnesses who were called at the trial can be categorised into three groups. First, the fishermen: Mr Martin, Mr Burrows (Mr Martin's uncle), and Mr Dyball. Secondly, several tourists who happened to be there: Ms Langenegger, Ms Boeck and Ms Pawlak. The three tourists were staying at a camping site in Hervey Bay, intending to go to Fraser Island the next day. When the appellant arrived at the car park the tourists were sitting at a picnic table in the vicinity of the boat ramp, talking to some other tourists. Thirdly, the appellant's friend, Mr Pinkerton.

² AB 243; paraphrased here.

- [9] I have omitted police witnesses as their evidence was not as to the particular events, but rather the locality, photographic evidence, condition of the LandCruiser and the blood alcohol concentration. I have also omitted the appellant, who did not participate in an interview, and did not give evidence.

The events prior to driving on the boat ramp

- [10] The description of the appellant's driving, and behaviour, prior to his driving onto the boat ramp was fairly uniform across the witnesses. Mr Martin described the appellant as "doing burnouts around the car park", and "sitting on one spots [sic] sometimes and just spinning the wheels".³ After speaking to the fishermen the appellant returned to doing more burnouts. When he talked to the fishermen the appellant was bragging about the burnouts and Mr Martin warned him to watch out for other cars in the car park.⁴
- [11] Mr Dyball said when the appellant spoke to them "he was a little bit drunk ... [w]asn't a hundred per cent".⁵ When the appellant left the LandCruiser started "driving over the gutters and that stuff up that way".⁶
- [12] Ms Langenegger said that the LandCruiser "drove around the car park in a wild manner before it stopped and ... the people came to see us".⁷ She clarified that as meaning that the LandCruiser was driven very quickly, spinning its wheels and standing in one place.⁸ When the occupants of the LandCruiser⁹ came to speak to them she said she could easily notice that both of them were intoxicated.¹⁰ After speaking to the backpackers the appellant got back into the vehicle and drove around again in the same fashion.¹¹
- [13] Ms Boeck said that after the appellant and Mr Pinkerton came to speak to the backpackers, the appellant then "drove in circles around the car parking area with us in the middle island".¹² She described the driving as being "at very high speed and turned circles and also caused the wheels to spin, creating so much smoke that sometimes we ... couldn't see the car anymore".¹³ She said that when Mr Pinkerton rejoined the appellant in the LandCruiser, after speaking to them, "the amount of noise increased even further and again they produced much smoke through the burning tyres".¹⁴
- [14] Ms Pawlak described the appellant as doing burnouts, at first in the larger car park area, but later closer to where the fishermen were.¹⁵ She also described a period when the appellant and Mr Pinkerton spoke to the backpackers, but then commenced burnouts again, describing it as creating "much smoke" and also that it was

³ AB 43.
⁴ AB 57.
⁵ AB 83.
⁶ AB 83.
⁷ AB 107.
⁸ AB 108.
⁹ The appellant and Mr Pinkerton.
¹⁰ AB 108.
¹¹ AB 109.
¹² AB 129.
¹³ AB 130.
¹⁴ AB 130.
¹⁵ AB 154.

“very loud”.¹⁶ In cross-examination she said that most of the burnouts took place in the car park area, but once or twice they did a burnout just near the top of the boat ramp.¹⁷

- [15] Mr Burrows said that when they first spoke to the appellant (at a time before the incident on the boat ramp) the appellant was intoxicated, and slurring his voice.¹⁸
- [16] Mr Pinkerton said that he and the appellant were celebrating a friend’s birthday and that he (Mr Pinkerton) had probably had about eight beers and about four bourbons.¹⁹ He was asked if the appellant was drunk, and said: “he seemed [alright], because we were drinking over – it was a long period of time. But yeah, I’m not sure.”²⁰ He said that he was “a bit more drunk than [the appellant]”, saying that he (Mr Pinkerton) was “falling over a bit”.²¹ He described speaking to the backpackers and accepted that there was a time when the appellant did burnouts around the car park.²² Whilst he could not recall how many times the appellant did the burnouts, he did some on his own, and also with Mr Pinkerton in the car.²³

Events at the boat ramp itself

- [17] Mr Martin said that the appellant “drove down onto the ramp behind me where I had me fishing gear and pulled him up [sic], told him that the stuff was there, and he drove over it”.²⁴ Mr Martin put his hands up and told him to stop, which the appellant did, and then he “went forward a little bit more and ... ran it over”.²⁵ At that point Mr Martin says he swore at the appellant, asked him what he was doing, and commented that then the appellant “just done a burnout back up the ramp and took off”.²⁶
- [18] In cross-examination Mr Martin adhered to that account.²⁷ He denied suggestions that as the LandCruiser reversed up the ramp, Mr Pinkerton “wound down his window and gave one of you the finger”, and also called out “You’re a fuckhead”.²⁸
- [19] Mr Dyball said that the appellant had parked down on the boat ramp and, having been told to watch out for a fishing line wrapped around an old coke bottle,

“he’s either [let the] brake go or something – just drove over – rolled over our bottle and that stuff, and that’s when we’ve said, you know, what’s going on, and he’s hit reverse and spun his wheels all the way back up the boat ramp, leaving a big black mark all the way up the ramp ...”²⁹

¹⁶ AB 154-155.
¹⁷ AB 165.
¹⁸ AB 178.
¹⁹ AB 193.
²⁰ AB 193.
²¹ AB 194.
²² AB 195, AB 207.
²³ AB 207.
²⁴ AB 45.
²⁵ AB 45.
²⁶ AB 46.
²⁷ AB 57-58.
²⁸ AB 61.
²⁹ AB 83.

- [20] Mr Dyball also could not recall the passenger, Mr Pinkerton, giving the finger or calling out.³⁰ However, he did not rule it out as “we were yelling at him, and – yeah, that’s – sounds like what could have happened but I can’t recall that happening myself”.³¹
- [21] Mr Burrows said that heard Mr Martin tell the appellant to be careful of the fishing line wrapped around the bottle, but even though the appellant acknowledged the warning, “he’s turned the vehicle wheel and drove over slowly, and he’s run over the bottle”.³² He went on: “after he’s run over the bottle, he’s put it in reverse and he’s reversed up, spinning his wheels all the way back up the ramp”.³³ In cross-examination he did not depart from that evidence, but added that he could hear the engine of the LandCruiser running as it drove down the ramp and ran over the bottle.³⁴ He said he could not recall the passenger (Mr Pinkerton) giving the finger or calling out.³⁵
- [22] Ms Langenegger did not describe such an event in detail, but then she was some distance away at the picnic table in the middle of the car park. However, she did say that “it seemed to me that the car came towards the fishermen, but stopped just before the place where the fishermen stood”.³⁶ In cross-examination she added: “To me it seemed as if there were a number of fishermen and they are [sic] pretty upset with all the goings on close to the boat ramp, or where they were fishing.”³⁷
- [23] Ms Boeck was watching from the same place as Ms Langenegger. She did not describe any event on the boat ramp, but did give an account of when the fishermen came up from the boat ramp and approached the car. In cross-examination she was specifically asked if she had seen the LandCruiser drive down the boat ramp and she said:
- “No. And as far as I can see, they didn’t [sic] approach the boat ramp area and they spun their tyres there, but as far as I remember, they never did drive down the boat ramp.”³⁸
- [24] Ms Pawlak (also at the picnic table) did not describe an incident on the boat ramp itself. However, she did say in cross-examination that once or twice the burnouts which the appellant was doing “actually went also on the boat ramp”, and “they did do a burnout just near the top of the ramp, but I can’t remember that they actually did one on the ramp”.³⁹
- [25] Mr Pinkerton said that the LandCruiser was driven down and parked at the boat ramp.⁴⁰ He did not describe any incident with the fishing gear or reversing and doing a burnout back up the ramp. In fact, on his evidence-in-chief the vehicle was parked at the ramp, not on it.⁴¹ In cross-examination, however, he was asked if he could recall hearing a loud bang on the right-hand front of the LandCruiser “when the car

³⁰ AB 92.

³¹ AB 92.

³² AB 179.

³³ AB 179.

³⁴ AB 187.

³⁵ AB 187.

³⁶ AB 110.

³⁷ AB 116.

³⁸ AB 142.

³⁹ AB 165.

⁴⁰ AB 196.

⁴¹ AB 196.

was on the boat ramp”.⁴² He said he could not, but said he remember the appellant “reversing up”,⁴³ and that he put his hand out of the window and gave the fishermen the finger, calling out something like “[y]ou’re a fuckhead”.⁴⁴ The next question from counsel for the appellant, was: “Now, I’m going to suggest also that as the car reversed up the ramp, it did so hurriedly?--- Yes.”⁴⁵ However, Mr Pinkerton denied that there was any smoke or screeching of tyres. He also denied that when the appellant was “down the ramp, stopped in the car”⁴⁶ that the appellant hit the accelerator to go forward.⁴⁷

- [26] It was not put to any of Mr Martin, Mr Dyball or Mr Burrows that the LandCruiser did not go down the boat ramp, stop on the boat ramp, or reverse hurriedly up with tyres screeching. Given that fact, and given that the appellant’s counsel cross-examined Mr Pinkerton on the basis that the LandCruiser was down on the ramp and reversed hurriedly up, albeit without smoke or screeching of tyres, the evidence of the backpackers on this topic ceases to be of significance. After all, they were some distance away and not in a position to hear anything that was said.

Events after the boat ramp

- [27] The particulars reveal a sequence of events in the way the appellant drove the LandCruiser after accelerating up the ramp. In short, the events described driving at or close to Mr Martin and his companions, driving at the picnic table area, driving at Mr Burrows but missing him, hitting a tree, driving at Mr Martin and hitting him, then accelerating away while Mr Martin’s foot, arm and head was trapped under the LandCruiser, driving at Mr Martin again but hitting a truck, and driving through a garden area towards Mr Martin.

Mr Martin

- [28] Mr Martin’s evidence supported that sequence. He said the appellant drove up around the toilet block and parked where there was a retaining wall in the garden. He said that the three of them walked towards the LandCruiser, with Mr Dyball and Mr Burrows standing at the toilet block, and Mr Martin walking towards the front of the LandCruiser. At that point the appellant “drove off real fast and nearly clipped us on the side.”⁴⁸ He said the appellant was “driving pretty fast” and that he “Drove across a couple gardens and ... like a kerb kind of thing”.⁴⁹ The appellant drove around the car park and came “pretty close to the undercover area”, which he described as being where the backpackers were.⁵⁰ He said the appellant had his lights on high beam, and beeped the horn. The appellant then backed out and started driving around again in the car park. Mr Martin and the others tried to get to the truck.⁵¹ At that point the appellant came over the kerb and Mr Martin was run over. He said that the appellant “knocked the tree down beside me”,⁵² and he “cleaned me up”.⁵³ He said the front of the LandCruiser hit him, he went underneath it and “it went

⁴² AB 207.

⁴³ AB 207.

⁴⁴ AB 208.

⁴⁵ AB 208.

⁴⁶ The form of words put to him by the appellant’s counsel.

⁴⁷ AB 208.

⁴⁸ AB 46.

⁴⁹ AB 46.

⁵⁰ AB 47.

⁵¹ Which they had parked near the top of the ramp.

⁵² AB 48.

⁵³ AB 48.

over me arm and part of me head and stopped on my ankle [sic].⁵⁴ The LandCruiser was on his ankle only for a brief moment, and Mr Martin yelled out. The appellant then “did a burnout off it and basically went straight over the kerb straight across from it”,⁵⁵ after which the appellant “came over the kerb ... and hit the truck and then pushed it over onto the rocks”.⁵⁶

[29] Mr Martin said that after the LandCruiser hit the truck, the appellant “started doing more burnouts up and through the car park”.⁵⁷ At that point Mr Martin said he was “freaking out”.⁵⁸ Mr Dyball and Mr Burrows were hiding at that time and Mr Martin “ended up dropping a battery through [the appellant’s] windscreen”.⁵⁹ Shortly after that the LandCruiser came to a halt.

[30] Once the LandCruiser stopped, Mr Martin tried to get the appellant to open the door, at which point the appellant got out of the car, took his shirt off and “started screaming out ... he wanted to fight”.⁶⁰ At that point Mr Martin hit the appellant and “started beating on him”.⁶¹

[31] In cross-examination Mr Martin denied the suggestion that he and the others had chased the LandCruiser with metal poles taken from the small gazebo which they had erected near where they were fishing.⁶² He said he did not see Mr Dyball chasing the car, as he was “too busy running from it myself”.⁶³ He said that all three of them were running from the LandCruiser. He adhered to his version of the events and sequence, but conceded that when the LandCruiser eventually stalled, he, Mr Burrows and Mr Dyball ran for the truck and eventually assaulted the appellant with a stick.⁶⁴

Mr Dyball

[32] Mr Dyball’s account was that after he had reversed up the ramp, the appellant went over towards the toilets in the car park, and he was doing burnouts through the car park. He and Mr Burrows went towards the appellant, at which point the appellant,

“aimed the four-wheel drive towards us, and [Mr Burrow has] gone one way towards the toilets and I’ve gone the other way to get out of the way, and – yeah, he was doing burnouts all around the car park.”⁶⁵

He then described how the appellant hit a tree, nearly knocking it out of the ground at which point he stopped. Then the appellant had:

“come back over the garden again, straight at us, and yeah, I’ve gone the other way, this way, and [Mr Martin] was more or less in front of

54 AB 48.
 55 AB 48.
 56 AB 49.
 57 AB 49.
 58 AB 49.
 59 AB 50.
 60 AB 51.
 61 AB 51.
 62 AB 60.
 63 AB 60.
 64 AB 67.
 65 AB 83.

the car, and yeah, as he's come over, I've seen [Mr Martin] jump this way, because he was coming straight for us, you know."⁶⁶

At that point Mr Martin went under the LandCruiser.

[33] At that point the appellant had "taken off then" and was "doing burnouts and that around there still".⁶⁷ The appellant was then in a position where the LandCruiser was pointing towards Mr Dyball and Mr Martin, at which point the appellant drove over a garden bed and "kept coming towards us – towards the truck. He smashed into the driver's side door of the truck".⁶⁸ The appellant was still doing burnouts, following which the LandCruiser "must have broken down or something, because he's pulled up facing the other way".⁶⁹

[34] In cross-examination Mr Dyball denied suggestions that they took poles and chased the LandCruiser. He maintained his version of events, reiterating that the appellant drove the LandCruiser in close proximity to himself and Mr Martin, hitting the tree near where they were standing, and in circumstances where Mr Dyball had to jump out of the way.⁷⁰ He also confirmed that the appellant ended up on the ground next to the LandCruiser, after it stalled or stopped.⁷¹

Mr Burrows

[35] Mr Burrows said that after the appellant had reversed up the ramp he,

"started going around the car park doing burnouts and stuff and coming back to where we were and facing the car at us, revving the motor, and just doing stilly stuff. Like, I was scared."⁷²

He then described the appellant as "lining us up with his car and revving the motor",⁷³ at which point the three of them went up to the undercover area "where the tourists were sitting".⁷⁴ He then said the appellant "faced the car at us again and started revving it, drove the car towards us and veered off to the right and just drove around".⁷⁵ At that point the three of them split up and Mr Martin went towards the truck, and "that's when they've lined him up", and "drove straight into my dad's truck".⁷⁶

[36] Mr Burrows described how the LandCruiser came "over the retaining wall", and the appellant "hit the accelerator again, and I've jumped out of the way and they've hit the tree behind me, knocking it out of the ground and snapping it in three".⁷⁷ It was after that that the appellant,

"reversed up and then put it in drive, and at this point [Mr Martin has] come running over, and as he's come over, he's put it in drive and hit the accelerator, and [Mr Martin] was obviously there, so they've run over him at that point ...".⁷⁸

⁶⁶ AB 84.

⁶⁷ AB 84.

⁶⁸ AB 85.

⁶⁹ AB 85.

⁷⁰ AB 91-93.

⁷¹ AB 99.

⁷² AB 179.

⁷³ AB 180.

⁷⁴ AB 180.

⁷⁵ AB 180.

⁷⁶ AB 180.

⁷⁷ AB 183-184.

⁷⁸ AB 184.

- [37] After the LandCruiser came to a stop Mr Burrows said that the three of them tried to detain the appellant. The passenger, (Mr Pinkerton) got out of the car and started running, so Mr Burrows chased him up the road. He did not catch Mr Pinkerton, and returned to where Mr Martin was.
- [38] In cross-examination he denied the suggestion that anyone was chasing the LandCruiser, or that any of the three of them had poles in their hands. He accepted that Mr Martin “threw a battery or something at the windscreen”.⁷⁹ He said that was after the LandCruiser had hit the tree and knocked it out of the ground, but before Mr Martin was hit.⁸⁰ Otherwise Mr Burrows maintained his account of how the appellant drove the LandCruiser, reiterating how the vehicle came straight at him and he had to jump out of the way, the fact that it hit the tree and knocked it out of the ground, and hit the truck. He also described how he had to stop Mr Martin from punching the appellant after the event.⁸¹

Mr Pinkerton

- [39] Mr Pinkerton’s account was affected by the fact that he said he had a bad memory as a result of being hit with a pole during the event, and his state of intoxication.⁸² However, his account contained these elements:
- (a) a rock was thrown as the LandCruiser was reversed up the ramp, and it broke the windscreen;
 - (b) some or all of Mr Martin, Mr Burrows and Mr Dyball were “smashing the car with poles”, and “we couldn’t see where we were going”;⁸³
 - (c) the reversing away from the boat ramp was because one of the fishermen tried to get his dog to attack the appellant;⁸⁴
 - (d) when the rock was thrown into the windscreen, “the whole windscreen was shattered and pushed in and then there was a hole near where I was”; the rock went through the windscreen and hit Mr Pinkerton in the nose;⁸⁵
 - (e) people were running beside the car, smashing the car with steel poles;⁸⁶
 - (f) the person who threw the rock through the windscreen was on the road, and “jumped out of the way, then we were trying to – then, yeah, we just kept driving”;
 - (g) after that point Mr Pinkerton did not know where the vehicle went as he could not see: “I couldn’t see after that point, so I didn’t know what he actually did”;⁸⁷ “I can’t really remember what we were doing ... I wasn’t concentrating on the car”;⁸⁸
 - (h) he was not sure whether the vehicle was driven down the retaining wall or crashed into the tree first, “but it was pretty close together, so we’ve done that”;⁸⁹

⁷⁹ AB 189.

⁸⁰ AB 189.

⁸¹ AB 191.

⁸² AB 196.

⁸³ AB 197.

⁸⁴ AB 197.

⁸⁵ AB 197-198.

⁸⁶ AB 198.

⁸⁷ AB 198.

⁸⁸ AB 199.

⁸⁹ AB 200.

- (i) at one point he looked back and “saw the guy and then we’ve come back and tried to chuck a U-turn”;⁹⁰ at that point the person (Mr Martin) was “laying down near the garden”, but getting up;⁹¹
- (j) Mr Pinkerton said he did not know how it was that Mr Martin came to be on the ground, nor could he say whether or not he had been hit by the LandCruiser;⁹²
- (k) then the appellant hit the truck and the fishermen were running down towards the LandCruiser; he said that when the LandCruiser ran out of fuel the appellant got out first, followed by Mr Pinkerton, at which point he saw that the appellant was on the ground; Mr Pinkerton was “smacked in the head with a pole on the top of my head”;⁹³ and
- (l) he said the appellant “just jumped out, sort of, paced towards them”; as for Mr Pinkerton, when he got out of the LandCruiser he had “[his] fists clenched, because I thought they were going to come up and start fighting me”.⁹⁴

[40] In cross-examination Mr Pinkerton emphasised the fact that he had imperfect memory and could not remember exactly where they went, or the sequence of events. However, he accepted that Mr Martin was run over by the LandCruiser. He clarified the vision that was available through the windscreen, describing it in this way: “Bad. You could see a bit.”⁹⁵

Ms Langenegger

[41] Ms Langenegger described how “the car came towards the fishermen, but stopped just before the place where the fishermen stood”.⁹⁶ She then said that the fishermen “ran away and got hold of some big sticks”, at which time the LandCruiser “continued to drive around the car park”.⁹⁷ She was then asked to describe what the fishermen did with the sticks:

“INTERPRETER: It seems as though the people with the – the fishermen with their poles or sticks were trying to stop the car. However then the car drove off and went on to that slight retaining wall and after that the white car crashed into a tree.

MS CUPINA: Alright. And describe what the fishermen were actually doing with the sticks or poles?

INTERPRETER: The fishermen with their poles did not attack the car as such, but I think they just wanted to protect themselves.”⁹⁸

[42] She then described how the appellant tried to drive over or onto an embankment and over a small retaining wall, after which: “... [t]he tree fell over. The fisherman was

⁹⁰ AB 200.
⁹¹ AB 201.
⁹² AB 201.
⁹³ AB 203.
⁹⁴ AB 203.
⁹⁵ AB 206.
⁹⁶ AB 110.
⁹⁷ AB 110.
⁹⁸ AB 110.

between the tree and the car. The car did not stop, and then the car drove over the legs of the fisherman.”⁹⁹ She then said that the LandCruiser “continued to drive wildly around the car-parking place”.¹⁰⁰ As to her own reaction, Ms Langenegger said: “we were scared to leave that place in the middle of the car park because the car was driving fast, you know, around, so we are [sic] a little bit scared to run away.”¹⁰¹ She then described the collision with the truck and the appellant getting out of LandCruiser, at which point “we took that opportunity also to run away, and tried to contact the police”.¹⁰² She also described the appellant as acting “very aggressively” when he got out of the vehicle and calling out something, though she could not remember what it was.¹⁰³

[43] In cross-examination she agreed that the fishermen were “running towards the car with the poles”,¹⁰⁴ but could not remember seeing the fishermen swinging the metal poles at the vehicle. However, having been referred to a previous interview, she agreed it was possible that the fishermen were attempting to hit the vehicle.¹⁰⁵

[44] As for the windscreen of the LandCruiser, Ms Langenegger said that she first noticed it to be broken at the end of the events. She could not say how it came to be broken. However, she did not agree that the windscreen was broken before the LandCruiser went over the retaining wall saying:

“INTERPRETER: The way I seem to remember is that the car would have passed the retaining wall and the windscreen was then broken in relation to the tree that was pushed over by the car.

MR LODZIAK: Okay. But is that an assumption by you, is it?

WITNESS: Yes.

INTERPRETER: So I’m pretty sure that the windscreen wasn’t broken when the car passed over the retaining wall, but I cannot say that it was definitely the tree that caused the breakage of the windscreen.”¹⁰⁶

[45] Ms Langenegger also said that after the LandCruiser hit Mr Martin, it kept driving, and shortly afterwards hit the truck.¹⁰⁷

Ms Boeck

[46] Ms Boeck testified that “the fishermen approached the car in order to stop it, the car slowed down, but then sped away”.¹⁰⁸ She then said that the LandCruiser “sped away from that position, climbed up an elevated little hillside, then came down again from that elevation”.¹⁰⁹ The vehicle then came down the embankment and “drove over a timber retaining wall and then back onto the car park”.¹¹⁰ As the

⁹⁹ AB 111.
¹⁰⁰ AB 111.
¹⁰¹ AB 111.
¹⁰² AB 112.
¹⁰³ AB 112.
¹⁰⁴ AB 117.
¹⁰⁵ AB 118.
¹⁰⁶ AB 120.
¹⁰⁷ AB 120-121.
¹⁰⁸ AB 132.
¹⁰⁹ AB 133.
¹¹⁰ AB 133.

LandCruiser went down the embankment “it hit a tree, but it was pointing in the direction of where the fishermen were”. The fishermen were very close to the tree when it was hit, “because the top of the tree fell onto one of the fishermen”.¹¹¹ Ms Boeck then described how the LandCruiser “drove over the roots of the uprooted tree and then contacted one of the fishermen”, and it drove over the fisherman’s foot.¹¹² At that point “[t]he man was very close to the tree”. She then described the way in which the LandCruiser was driven after that moment:

“INTERPRETER: The car continued to drive and did some more circles around the centre island of the car park area.

MS CUPINA: And, when it was doing the circles around the centre car park area, was there – how was it driving? Was the – can you describe how he was driving while he was doing the circles?

INTERPRETER: The car was driven as if by a madman and very fast, and I was very scared, because I thought the car might come onto the grassy area where we were sitting and that we would be in danger, ourselves.”¹¹³

[47] She described the collision between the LandCruiser and the truck, and the appellant getting out of the LandCruiser:

“INTERPRETER: I saw that he opened the door, but then we turned to run, however, I heard and also saw that he ripped his T-shirt off his chest and called out something. That’s all I remember.

MS CUPINA: What did he call out?

INTERPRETER: I’m not quite sure, and I can’t remember exactly, but it seems that he might have said who wants to fight with the beast, but it’s a little bit unclear.”¹¹⁴

[48] In cross-examination Ms Boeck said that the fishermen did run after the LandCruiser, and that one of the fisherman “had a round metal pole in his hand as he pursued the white car”.¹¹⁵ She was questioned about the damage to the windscreen, and she said that it had been smashed before the LandCruiser had stopped, but: “The windscreen was slightly damaged as it fell – it came off the retaining wall, but then, later, it was totally destroyed when it hit the tree.”¹¹⁶

[49] She described how the LandCruiser continued after it went over Mr Martins’ foot. She described her own condition as being “quite scared”.¹¹⁷

Ms Pawlak

¹¹¹ AB 134.

¹¹² AB 135.

¹¹³ AB 135.

¹¹⁴ AB 136.

¹¹⁵ AB 143.

¹¹⁶ AB 146.

¹¹⁷ AB 147.

[50] Ms Pawlak said that after the LandCruiser had driven up the embankment and crossed a little wall, it “again came to the fishermen’s area, and the fishermen approached them and wanted to talk to them”.¹¹⁸ She said that the second time the LandCruiser went up the embankment, and “they came down across the retaining wall, they drove against the tree”. The tree fell over and the vehicle continued down the embankment or the retaining wall.¹¹⁹ At that point the vehicle “headed for the fishermen, and the fishermen dispersed, and then the jeep¹²⁰ came in our direction ...”.¹²¹ She said that the LandCruiser drove past the picnic area where the backpackers were, “went around the parking area ... and then later they collided with the fisherman’s van”.¹²² Her description of the events after the LandCruiser came over the retaining wall was as follows:

“As I said before, the fishermen were there in that area, and, as the car approached they jumped out of the path of the car. One of them was before the car, and I believe that that fisherman suffered injuries on his foot due to the car.”¹²³

[51] The sequence was clarified as being that the LandCruiser did burnouts near the fishermen, then drove up an embankment, drove back to the fishermen, then up the embankment a second time, then it hit a tree, went over a retaining wall, and hit Mr Martin.¹²⁴ She said that when the LandCruiser stopped the appellant got out, then “took of his T-shirt and shouted do you want to fight the beast”.¹²⁵

[52] In cross-examination she agreed that some of the fishermen had poles in their hands and approached the vehicle. However, she could not remember any of the fishermen swinging the metal poles towards the vehicle.¹²⁶ She was unsure as to when the windscreen was smashed.

The appellant’s contentions

[53] The appellant’s position at trial was accurately summarised by the learned trial judge:

“On the other hand, though, the defence argued that, in fact, [the appellant] was responding to the aggression and the attacks of the three fishermen, that the windscreen was broken early on in the proceedings, as they left the ramp, as a result of a rock being thrown, not as a result later on in the incident – after the injury – as a result of the car battery being thrown. The defence argues that you would accept that the fishermen – at least one or two of them – had metal poles. They were acting aggressively; they were chasing him. He and his passenger feared for their own safety; they were trying to get away – and that as a result of the smashed windscreen and Mr Martin being on the left-hand side of the vehicle, he was unable to see Mr Martin. He

¹¹⁸ AB 155.

¹¹⁹ AB 155.

¹²⁰ Referring to the LandCruiser.

¹²¹ AB 156.

¹²² AB 156.

¹²³ AB 157.

¹²⁴ AB 158.

¹²⁵ AB 160-161.

¹²⁶ AB 167.

did not deliberately drive at him, and the collision – or the running over of Mr Martin – was accidental.”¹²⁷

[54] Before this Court the appellant (who was self-represented) advanced detailed written submissions essentially making the same points. The essential steps in the sequence of events for which the appellant contends, were as follows:

- (a) the reason for reversing up the boat ramp was because one of the fishermen tried to get their dog to attack the appellant; having reversed up the ramp the appellant then proceeded “to drive forward towards the exit of the River Heads boat ramp precinct”,¹²⁸
- (b) the appellant’s windscreen was shattered because one of the fishermen threw a rock through it, hitting Mr Pinkerton; that occurred just after the appellant had reversed up the ramp, and when he began to proceed towards the exit of the boat ramp precinct;¹²⁹
- (c) the fishermen chased the appellant’s vehicle, armed with metal poles; the appellant’s driving of the vehicle thereafter was merely to try and get away from the fishermen, who were chasing the vehicle;¹³⁰
- (d) because of the state of the windscreen the appellant did not see Mr Martin;¹³¹
- (e) the appellant and Mr Pinkerton were assaulted when the LandCruiser came to a stop;¹³² and
- (f) whilst the appellant had done a number of burnouts prior to the altercation with the fishermen, no burnouts were done after that time; the appellant’s driving was merely to get away from the fishermen, and after the rock was thrown, shattering the windscreen.¹³³

Discussion

[55] All of the points now raised on appeal were ones which were advanced at trial. The addresses of each of the prosecution and defence canvassed the competing contentions on each stage of the events, and referred in great detail to the evidence said to support or oppose each contention. The summing up by the learned trial judge did the same thing. Each area was addressed in detail, including the variations in evidence as between Mr Martin, Mr Burrows and Mr Dyball, and in relation to Ms Langenegger, Ms Boeck and Ms Pawlak. The learned trial judge also gave specific directions as to the elements of which the jury had to be satisfied beyond reasonable doubt before they could convict.¹³⁴ It was pointed out that the appellant did not contest that he operated the LandCruiser, at the car park at River Heads boat ramp. However, he did dispute that he drove dangerously and thereby caused the admitted grievous bodily harm to Mr Martin. Finally, the jury were reminded that the appellant contested that he was adversely affected by alcohol at the time Mr Martin was injured. The jury were directed that in order to conclude that the appellant had operated his vehicle dangerously, the prosecution had to prove that there was a situation which, viewed objectively, was dangerous or fraught with

¹²⁷ AB 222-223.

¹²⁸ Appellant’s outline, paragraph 2.1.

¹²⁹ Appellant’s outline, paragraph 2.2.

¹³⁰ Appellant’s outline, paragraph 2.3.

¹³¹ Appellant’s outline, paragraph 2.4.

¹³² Appellant’s outline, paragraph 2.5.

¹³³ Appellant’s outline, paragraph 2.6.

¹³⁴ AB 226-227.

danger.¹³⁵ Further, the jury was specifically directed that the prosecution had to exclude that the injury was caused accidentally. In that respect they were told that the prosecution had to prove that the appellant intended the injury to occur, or foresaw it as a possible consequence of the manner of his driving or his actions, or that an ordinary person in his position would reasonably have seen that event as a possible consequence of his actions.¹³⁶ Finally, the jury was specifically directed that the prosecution had to exclude that the appellant was acting under the stress of some sudden or extraordinary emergency.¹³⁷

[56] No complaint was made about the directions given to the jury by the learned trial judge.

[57] Where the ground of appeal is that the verdict was unsafe and unsatisfactory, the question for this Court is that which has been expressed in *M v The Queen*:¹³⁸

“Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. But in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses. On the contrary, the court must pay full regard to those considerations.”¹³⁹

[58] As to the reason for the appellant reversing up the ramp, the jury had the benefit of the evidence of four witnesses, namely Mr Pinkerton on the one hand, and Mr Martin, Mr Burrows and Mr Dyball on the other. Mr Pinkerton’s evidence was that while the LandCruiser was stopped on the ramp, and the appellant was speaking to the fishermen, he asked about the dog. He said that the person holding the dog was “trying to get it to attack him”, and “[i]t was jumping up on the doors and that and so he wound the window up, then we started to reverse out”.¹⁴⁰ In cross-examination he said he could recall reversing up, and agreed it was “after the dog became aggressive”.¹⁴¹

[59] The evidence of Mr Martin, Mr Burrows and Mr Dyball only gave faint support to that version. In his evidence-in-chief Mr Martin said that the dog was aggressive and not good with strangers, but said nothing about the sort of attack that Mr Pinkerton referred to. In cross-examination it was merely put that there was a conversation about the dog, which Mr Martin said was earlier than the occasion when the appellant reversed up the ramp.¹⁴² It was not put to him that there was a threat or attack of the sort referred to by Mr Pinkerton. Mr Dyball agreed that the appellant had asked if he could pat the dog, but said the appellant had been told that

¹³⁵ AB 228.

¹³⁶ AB 229.

¹³⁷ AB 230.

¹³⁸ *M v The Queen* (1994) 181 CLR 487 at 493.

¹³⁹ Internal citations omitted.

¹⁴⁰ AB 197.

¹⁴¹ AB 207.

¹⁴² AB 57.

he was better off not doing that because the dog might bite him.¹⁴³ He denied that the dog was down on the boat ramp, saying it was tied up to the truck at the top of the ramp.¹⁴⁴ Mr Burrows agreed that the appellant had asked if he could pat the dog, and that the dog was growling a bit, but said that the dog was on the leash at all times, and expressly denied that the dog was aggressive because he (Mr Burrows) was shaking the collar.¹⁴⁵ It was not put to Mr Burrows that there was an attack or threat of the sort referred to by Mr Pinkerton.

- [60] At the same time the jury had the evidence from Mr Martin, Mr Burrows and Mr Dyball that the appellant had, apparently deliberately, run over some of the fishing gear just before he accelerated back up the ramp. Mr Pinkerton denied any such thing. Further, notwithstanding that none of the fishermen could recall it, or denied it, the jury also had the evidence of Mr Pinkerton that, at the time the appellant reversed up the ramp, Mr Pinkerton stuck his hand out the window, gave the fishermen the finger, and called out “You’re a fuckhead”.
- [61] In my view it was open to the jury to conclude that the reason for reversing up the ramp, and the manner in which that occurred, was largely as described by Mr Martin, Mr Burrows and Mr Dyball, and was not the result of some sort of attack by one of the fishermen and the dog.
- [62] The appellant’s contentions as to the windscreen face considerable difficulty. It was only Mr Pinkerton who gave the account of a rock being thrown, and proximate to the LandCruiser reversing up the ramp. According to that version the rock was thrown with enough force that the whole windscreen was shattered, with the rock coming in through a hole in the windscreen and hitting Mr Pinkerton in the face.¹⁴⁶ On that account the windscreen was so damaged that it was difficult to see thereafter.
- [63] However, none of Mr Martin, Mr Burrows or Mr Dyball supported that version. In fact all three denied that a rock was thrown. True it is that Mr Martin said he threw a battery at the windscreen (a fact supported by Mr Burrows), but that was later in the piece.
- [64] More importantly, none of the backpackers’ evidence gave any support to Mr Pinkerton’s account of when the windscreen was damaged. Indeed, their evidence was generally to the effect that the damage to the windscreen occurred later when the LandCruiser hit a tree, just before colliding with Mr Martin. Ms Langenegger did not agree that the windscreen was broken at a time earlier than when the LandCruiser came over the retaining wall and hit the tree.¹⁴⁷ Ms Boeck disagreed that the windscreen had been smashed before it hit the tree, saying that it had been “slightly damaged” as the LandCruiser came off the retaining wall, but then when it hit the tree “it was totally destroyed”.¹⁴⁸ Ms Pawlak gave evidence that she thought the windscreen was damaged “when they hit the tree”, but qualified it by saying “I’m

¹⁴³ AB 89.

¹⁴⁴ AB 90.

¹⁴⁵ AB 187-188.

¹⁴⁶ AB 197-198.

¹⁴⁷ AB 120.

¹⁴⁸ AB 146.

not quite sure”.¹⁴⁹ In cross-examination she made it plain that she was not sure when the windscreen was damaged.¹⁵⁰

- [65] It was open to the jury to accept the evidence of Ms Langenegger and Ms Boeck, which supported the evidence of Mr Martin, Mr Burrows and Mr Dyball, in this respect. That is, it was open to the jury to conclude that the windscreen was not damaged until about the time the LandCruiser hit the tree shortly before it collided with Mr Martin. If the jury drew that conclusion, it had an obviously damaging impact on the version of events propounded by Mr Pinkerton, particularly insofar as concerns the ability of the appellant to see out of the windscreen at all times up to when he hit the tree shortly before hitting Mr Martin. It would completely negate the suggestion that there was any difficulty seeing generally. That conclusion would also sit well with the fact that the appellant seemed to negotiate his way around all of the obstacles in the car park until the point when he collided with the tree, and then Mr Martin. It would also negate the suggestion that was made, namely that the appellant was trying to head for the exit of the car park but his inability to see explained the erratic and circular nature of where he drove.
- [66] That conclusion would also have had an impact upon the jury’s assessment of the evidence given by Mr Martin, Mr Burrows and Mr Dyball, supported to an extent by Ms Langenegger and Ms Boeck, namely, about the LandCruiser being pointed at or aimed at the fishermen. Any suggestion that that was caused by the inability to see, would likely be rejected by the jury. Thus, one can see the impact that flows on to the question which the jury had to answer, namely whether the driving was deliberate or reckless, and whether the injury was the product of accident or a reaction to an extraordinary or sudden emergency.
- [67] There was a body of evidence from the backpackers which supported the fact that at least some of Mr Martin, Mr Burrows and Mr Dyball were armed with metal poles from an annex which they had erected, and that they brandished them in the direction of the LandCruiser. However, their evidence did not support Mr Pinkerton’s version of an attack on the LandCruiser and its occupants. Thus, Ms Langenegger said that “[t]he fishermen with their poles did not attack the car as such, but I think they just wanted to protect themselves”.¹⁵¹ In cross-examination she said she did not recall whether the fishermen were swinging the metal poles at the LandCruiser, and could not recall whether they were running alongside the vehicle.¹⁵² She accepted that she had previously told the police that the fishermen “attempted to hit the jeep to stop him”, but said she could not remember if that was so, whilst conceding it was possible.¹⁵³ Ms Boeck said that one of the fishermen had a pole in his hand as he pursued the vehicle and agreed only that it “could be a possibility” that that person swung the metal pole at the vehicle.¹⁵⁴ Ms Pawlak recalled that the fishermen had poles in their hands and that they approached the vehicle, but said that she did not remember whether any of them had swung the poles towards the car.

¹⁴⁹ AB 162.

¹⁵⁰ AB 167.

¹⁵¹ AB 110.

¹⁵² AB 117.

¹⁵³ AB 117-118.

¹⁵⁴ AB 143.

- [68] None of that evidence, when put together with that of Mr Martin, Mr Burrows and Mr Dyball, would lead the jury to conclude that there was the sort of attack that Mr Pinkerton referred to. According to him “[t]here were just people running beside the car, smashing the car with steel poles”.¹⁵⁵
- [69] Thus, it was open to the jury to conclude that whatever it was that the fishermen did with the poles, it was not the sort of altercation or attack which would cause the appellant to flee in fear of his safety. Indeed, if the jury had concluded that the windscreen was not damaged until later in the piece, there is no reason why, even if the three fishermen were attacking the LandCruiser with poles, the appellant could not simply have driven out of the car park. After all, he had a vehicle which was operating normally, he had sufficient skill to negotiate the car park, and his vision was not impeded. That he did not, the jury may have concluded, bespoke some other attitude on the appellant’s part.
- [70] The evidence referred to above, particularly that in relation to the windscreen, was sufficient for the jury to conclude, as it might have done, that the appellant could see Mr Martin up until immediately before the moment he was struck.
- [71] In terms of the characterisation of the appellant’s driving, there was an abundance of evidence, which the jury could accept, which pointed to aggressive and reckless driving. Leaving aside the conduct up to the point when the appellant’s vehicle was on the boat ramp (performing the burnouts), the description from most of the witnesses was of driving which the jury could characterise as dangerous. Thus:
- (a) the appellant drove across gardens and a retaining wall;¹⁵⁶
 - (b) the vehicle appeared to be directed at the fishermen from time to time;¹⁵⁷
 - (c) the vehicle drove in close proximity to the fishermen, as well as the tourists;
 - (d) the vehicle collided with a tree, then Mr Martin;
 - (e) the vehicle collided with the truck;
 - (f) descriptions of the manner of driving included that he was driving “pretty fast”;¹⁵⁸ he was driving close enough to people that they had to jump out of the way;¹⁵⁹ he was driving “like an idiot”;¹⁶⁰ even after hitting the truck he was still doing burnouts;¹⁶¹ he was driving in a “wild manner”;¹⁶² after hitting Mr Martin the appellant “continued to drive wildly around the car-parking place”;¹⁶³ and after Mr Martin was hit the LandCruiser “was driven as if by a madman and very fast”.¹⁶⁴
- [72] The jury also had the evidence from the three tourists as to the appellant’s conduct once the LandCruiser had come to a stop. Ms Langenegger said that when he got

¹⁵⁵ AB 198.

¹⁵⁶ Martin at AB 46, 48, 62; Dyball at AB 84, 87, 97, 98; Langenegger at AB 110, 111, 118, 123; Boeck at AB 133, 134, 144, 149; Pawlak at AB 155, 158; Burrows at AB 189, 190; Pinkerton at AB 119-200, 205.

¹⁵⁷ Martin at AB 48, 61; Dyball at AB 83, 84, 85, 87, 93, 95; Boeck at AB 134, 145.

¹⁵⁸ AB 46.

¹⁵⁹ AB 93.

¹⁶⁰ AB 94.

¹⁶¹ AB 99.

¹⁶² AB 107.

¹⁶³ AB 111.

¹⁶⁴ AB 135.

out of the vehicle he “acted very aggressively”, and “cried out something”.¹⁶⁵ Ms Boeck said the appellant got out of the car, ripped off his T-shirt and called out “Who wants to fight with the beast?”¹⁶⁶ Ms Boeck also described the impression the appellant made on her, when he hit the tree: “the driver was sitting in a fixated state staring straight ahead in the car, and that captivated me.”¹⁶⁷ Ms Pawlak said the appellant got out of the car, took his T-shirt off, and shouted “do you want to fight the beast”.¹⁶⁸ That evidence could be accepted by the jury as pointing to the appellant being in an aggressive mood, which could then characterise the driving referred to above.

[73] In summary, in my view there was ample evidence that the jury could accept, showing that the appellant drove in a dangerous manner causing the injury to Mr Martin. Further, there was ample evidence which they could accept and lead them to the conclusion that what occurred was not the consequence of an accident or a response to an emergency. Once the evidence of the manner of driving was accepted, the jury could put that together with the blood alcohol reading some two hours later, and conclude that the appellant’s intoxicated state adversely affected his ability to drive safely, and contributed to the dangerous way in which he did drive on the night.

[74] In summary, in my view it was open upon the whole of the evidence for the jury to be satisfied beyond reasonable doubt that the appellant was guilty of the offence with which he was charged.

Conclusion

[75] For the reasons given above I would dismiss the appeal.

[76] **DALTON J:** I agree with the reasons of Morrison JA and with the proposed order.

¹⁶⁵ AB 112.

¹⁶⁶ AB 136.

¹⁶⁷ AB 144.

¹⁶⁸ AB 161.