SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jolly* [2002] QCA 306
PARTIES:	**R** **V** **JOLLY, Gregory Rollo** (appellant)
FILE NO/S:	CA No 53 of 2002 DC No 754 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against conviction and sentence
ORIGINATING COURT:	District Court at Ipswich
DELIVERED ON:	23 August 2002
DELIVERED AT:	Brisbane
HEARING DATE:	13 August 2002
JUDGES:	Williams JA, Mackenzie and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Appeal against conviction dismissed. Application for leave to appeal against sentence dismissed.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES - DRIVING OFFENCES – CULPABLE OR DANGEROUS DRIVING CAUSING DEATH OR BODILY HARM – PROOF AND EVIDENCE - where appellant convicted of dangerous driving causing death and grievous bodily harm – whether there was reliable evidence that the appellant's car had been forced onto the wrong side of the road – whether the element of "fault" had been established CRIMINAL LAW – APPEAL AND NEW TRIAL AFTER CONVICTION – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – GENERALLY – where appeal against conviction - whether verdict unsafe and unsatisfactory– whether a jury acting reasonably on the whole of the evidence was bound to have a reasonable doubt *Jones v The Queen* (1997) 191 CLR 439, considered
COUNSEL:	R Clutterbuck for the appellant C Heaton for the respondent

SOLICITORS:	Mitchells Solicitors for the appellant Director of Public Prosecutions (Queensland) for the respondent

[1] **WILLIAMS JA:** I agree with the reasons for judgment of Mackenzie J and with the order he proposes.

[2] **MACKENZIE J:** The appellant was convicted of dangerous driving causing death and grievous bodily harm. The incident occurred on the Brisbane Valley Highway when the vehicle driven by the appellant collided with cars travelling in the opposite direction.

[3] It occurred in the vicinity of where two lanes merged at the end of an overtaking lane. In his record of interview and in evidence at the trial the appellant said that he was attempting to overtake a vehicle driven by an elderly man, which was slow moving and towing a caravan. He said that the vehicle in front started to move to the right, forcing him to move to the right and into the path of oncoming traffic. He applied his brakes which caused his wheels to lock up and his trailer to jack-knife with the result that his car spun into the path of the oncoming traffic. He attempted to drive across the oncoming traffic to avoid a collision but was unsuccessful.

[4] The Crown case depended on the evidence of other road users. The day was generally rainy and the road was wet. The traffic was generally travelling more slowly than the speed limit because of the conditions. One of the Crown witnesses Ms Blake had been following the appellant's vehicle, which was towing a trailer with two motorcycles on it, but passed it in the overtaking section. She also passed the vehicle towing the caravan. She gave evidence that as she was proceeding ahead of the two vehicles she saw the appellant attempting to overtake the caravan by driving in the right-hand lane of the double lanes. She saw the car pulling the caravan move towards the right-hand lane, forcing the appellant into the oncoming traffic.

[5] Three people in a vehicle following the appellant's vehicle gave evidence. Mr Varga said that he saw the car driven by the appellant pull onto the incorrect side of the road in an apparent attempt to overtake the caravan. There was insufficient time to successfully complete the manoeuvre and the collision occurred. He disagreed with the suggestion that the car and caravan had forced the appellant's vehicle onto the wrong side of the road.

[6] Mrs Manole, whose recollection was somewhat limited, said that the appellant pulled out from behind the caravan and straddled the centre-line of the road as if to overtake the caravan. She did not see the caravan move in a way which would have caused the appellant to move onto the incorrect side of the road to avoid it. Mr Manole described seeing the appellant's vehicle indicate and move out from behind the caravan to overtake it. His evidence is not of particular assistance to either case because of its lack of detail.

[7] An elderly woman who was a passenger in the car towing the caravan said that it was travelling in the left lane of the double lane section of the road heading in a general downwards direction approaching a bend to the left. There was a sign on the left of the road indicating a merge as the overtaking lane was coming to an end. She said that as the driver of the vehicle she was in began to merge she heard a loud revving noise from directly behind. She told the driver there was a car trying to

overtake them and that he would not make it because there was traffic coming the other way. She then heard the sound of the collision.

[8] By the time of trial the driver of the vehicle towing the caravan was unfit to give evidence because of dementia. Occupants of other vehicles involved in the collision were unable to give any evidence of substance concerning the way in which the accident happened.

[9] The Crown case essentially was that the appellant attempted to overtake the vehicle towing the caravan in circumstances where it was not safe to do so. The appellant said that he had not seen signs indicating that the double lanes were coming to an end. The Crown characterised the case as one where the appellant had created a dangerous situation when he attempted to overtake the vehicle towing the caravan when there was insufficient overtaking lane left for him to do so.

[10] Counsel for the appellant, in developing the ground that the verdict was unsafe and unsatisfactory, analysed the evidence in considerable detail with a view to establishing that, firstly, the reliable evidence supported the conclusion that the appellant's vehicle had been forced onto the wrong side of the road by the driver of the vehicle towing the caravan moving out while he was executing a passing manoeuvre and secondly, that the element of fault inherent in the offence of dangerous driving had not been established. It was also submitted that while the appellant may have been momentarily inadvertent in not observing the road signs or failing to notice that the two lanes were merging into one, the road conditions and design contributed to the incident.

[11] It was submitted that the verdict was unsafe and unsatisfactory. It was submitted that, on the whole of the evidence, a jury acting reasonably was bound to have a reasonable doubt (*Jones v The Queen* (1997) 191 CLR 439).

[12] It is apparent from the summing-up that the kinds of issues relied on by the appellant were addressed to the jury at trial. Although there are variations between the accounts given by witnesses, it was the jury's function to decide whether they were prepared to accept any particular account. In my view it was open to the jury acting reasonably to conclude that the appellant, having failed to realise that the road was reverting to a single lane, drove dangerously in attempting to pass the vehicle towing the caravan at a place where it was unsafe to do so. No reason has been demonstrated why the conviction is unsafe and unsatisfactory. The appeal against conviction should be dismissed.

[13] Although the notice of appeal seeks leave to appeal against sentence, the application was not argued and should be dismissed.

[14] **HOLMES J:** I agree with the reasons for judgment of Mackenzie J and with the order he proposes.