

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Delorey, 2010 NSCA 65

Date: 20100722

Docket: CAC 321742

Registry: Halifax

Between:

Kyle Anthony Delorey

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Oland

Appeal Heard: June 14, 2010

Subject: Dangerous Driving - s. 249 Criminal Code - Sufficiency of Reasons - Misapprehension of Evidence

Summary: The appellant was the driver of a loaner vehicle which left the road and broke a power pole. One passenger was injured, another died of his injuries. Based on the evidence of speed, the appellant's blood alcohol content, the condition of the tires, and the road conditions, the judge was satisfied beyond a reasonable doubt that the appellant drove in a manner that was dangerous to the public because his driving amounted to a marked departure from the standard of care of a reasonable person in the circumstances. The evidence showed that the tread on both front tires on the loaner vehicle provided by the car dealership was so minimal that they would not pass safety inspection. The judge suggested that, even if he did not conclude that the appellant knew about the condition of the tires, he should have checked the tires before he started driving the loaner.

Issues: Whether the trial judge failed to give adequate reasons for finding certain evidence credible or to explain why he disagreed with certain expert evidence. Whether the judge apprehended certain evidence. Whether he erred in assigning responsibility to the appellant to inspect

the tires on the loaner vehicle.

Result: Appeal allowed and new trial ordered. A trial judge is in the best position to determine matters of fact and credibility. Here, the judge's reasons, examined in their entire context, were sufficient to inform the parties of the basis of the verdict, to provide public accountability and to permit meaningful appeal. There were no contradictions between his reasons and the expert evidence as alleged, and the judge was not required to determine exactly what happened when the car left the road. Nor were there significant errors in his understanding of the substance of the evidence which would amount to misapprehension of the evidence. The condition of the tires was a critical factor in the judge finding the appellant guilty of dangerous driving. He did not find that the appellant had actual knowledge of the poor condition of the front tires. The judge erred in law in finding that there was a duty of care on the appellant to inspect the tires on the loaner vehicle before driving it. Even if there was such a duty, he erred in finding that a breach of that duty constituted a marked departure from the standard expected of a reasonably prudent person and hence blameworthy conduct amounting to dangerous driving.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 20 pages.