

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Vanmerrebach, 2008 NSSC 3

Date: 20080108
Docket: CR. No. 276982
Registry: Halifax

Between:

Her Majesty the Queen

-and-

Trevor Robert Vanmerrebach

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Judge: The Honourable Justice Robert W. Wright

Heard: December 10, 11, 12, 13,17, 18, 19, 2007 in Halifax, Nova Scotia

Oral

Decision: January 8, 2008

Written

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Subject: Criminal negligence causing death and causing bodily harm - dangerous driving causing death and causing bodily harm.

Summary: The accused was driving home in his newly acquired Ford Mustang with two of his lifelong friends as passengers after they had spent the evening together at a friend's home. The accused was driving at a highly excessive speed on a winding rural highway and lost control of his car as it exited a curve. The car slid sideways across the road and over the ditch before slamming into a utility pole with enormous force. All three occupants of the car were ejected upon impact. One passenger was pronounced dead at the scene and the other was seriously injured. The accused was charged with criminal negligence in the operation of a motor vehicle causing the death of one passenger and causing bodily harm to the other. He was also charged with dangerous driving causing death and causing bodily harm respectively.

Issue: The central issue for determination was whether the acts of negligence of the accused in the operation of his vehicle were of such a marked departure from the standard of care of a reasonable person as to attract criminal responsibility and, if so, whether they amounted to criminal negligence or the lesser included offence of dangerous driving.

Result: The court applied the modified objective test in finding that the Crown had established beyond a reasonable doubt both the actus reus and mens rea of penal negligence. However, the court was not satisfied beyond a reasonable doubt that the conduct of the accused, on the basis of excessive speed alone, met the high standard required for a conviction of criminal negligence. Accordingly, the accused was convicted of the lesser included offences of dangerous driving causing death and causing bodily harm respectively.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
