



## HIGH COURT OF AUSTRALIA

7 April 2011

DANELLE EVELYN MILLER v MAURIN ASHTON MILLER  
[2011] HCA 9

Today the High Court allowed an appeal against a decision of the Court of Appeal of the Supreme Court of Western Australia regarding the duty of care between joint participants in an illegal enterprise: the use of a stolen car.

The events giving rise to the case took place early one morning in 1998. The plaintiff, then aged 16, had been drinking and wandering in the streets in a Perth suburb with her sister and cousins. She had no money to get home and the last train had left, so she decided to steal a car. She managed to start a car in a nightclub car park. An older cousin, the defendant, then aged 27, offered to drive the plaintiff and her cousin and sister home. He got into the driver's seat and several of his friends also got into the car, totalling nine passengers. Initially the defendant drove safely, but then sped up and began to drive dangerously. The plaintiff twice asked to be let out; the defendant refused her requests. The car struck a pole, killing one passenger and injuring the plaintiff, leaving her a tetraplegic.

In jointly using the stolen car, the plaintiff and the defendant together contravened s 371A of *The Criminal Code* (WA) ("the Code"), which provides that a person who uses a motor vehicle without the consent of the owner is said to steal that vehicle. Section 8 of the Code provides that two persons who jointly prosecute a common unlawful purpose will both be guilty of any offence that is a probable consequence of that prosecution, unless one of those persons withdraws from the prosecution by words or conduct accompanied by reasonable steps to prevent the commission of the offence. Referring to s 371A and relevant case law, the Court of Appeal of the Supreme Court of Western Australia held that the defendant owed the plaintiff no duty of care and that her action should therefore fail.

The High Court of Australia today held that whether the prosecution of a joint illegal enterprise negates the existence of a duty of care between participants depends on the statutory purposes of the section creating the offence. The Court held that the statutory purposes of s 371A of the Code are not consistent with a finding of duty of care between those who joined in committing the crime. The purposes of s 371A encompass not only the protection of property rights, but also road safety and the prevention of dangerous driving. In the circumstances of the case, however, a majority of the Court held that the plaintiff withdrew from the joint illegal enterprise when she asked to be let out of the car, and that there were no reasonable steps then available to her to prevent the further commission of the offence. Accordingly, she was owed a duty of care by the defendant when the car struck the pole, and could recover damages for her injuries.

The Court allowed the appeal, and set aside the order of the Court of Appeal, ordering that the appeal to that Court be dismissed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*