HIGH COURT OF AUSTRALIA

20 June 2012

TRENT NATHAN KING v THE QUEEN

[2012] HCA 24

Today the High Court by majority dismissed an appeal by Trent Nathan King against two convictions under s 318(1) of the *Crimes Act* 1958 (Vic) ("the Act") for "culpable driving causing death". The Court held that there was no miscarriage of justice in the way in which alternative verdicts for the lesser offence of "dangerous driving causing death" under s 319(1) of the Act were left to the trial jury.

In 2005 Mr King was the driver of a car which was involved in a collision. Mr King's two passengers died in the collision. Following a jury trial in the County Court of Victoria Mr King was found guilty of two counts of culpable driving causing death and sentenced to a term of imprisonment. Mr King filed applications in the Court of Appeal of the Supreme Court of Victoria for leave to appeal against his convictions and sentence. The Court of Appeal allowed the appeals against sentence, and reduced his total effective sentence, but otherwise dismissed the applications for leave to appeal.

By special leave, Mr King appealed to the High Court against the decision of the Court of Appeal dismissing his applications for leave to appeal against his convictions. The sole ground of appeal related to the standard of culpability applied in the direction of the trial judge to the jury concerning the lesser alternative verdicts of dangerous driving causing death contrary to s 319(1) of the Act. The trial judge told the jury that dangerous driving was established by proof that the accused drove in a way that "significantly increased the risk of harming others" and that it was not necessary for the Crown to prove that the driving was "deserving of criminal punishment". The jury's authority to return a verdict of guilty of an offence against s 319(1) was conferred by s 422A(1) of the Act, which conditioned the power to deliver an alternative verdict upon the jury not being satisfied that the accused was guilty of the offence charged under s 318. Mr King complained that the trial judge had pitched the level of culpability for the lesser offence of dangerous driving causing death at such an erroneously low level that the jury would have been less inclined to consider convicting him of that offence.

At the time it was made, the trial judge's direction accorded with existing authority in Victoria. However, the subsequent decision of the Court of Appeal in *R v De Montero* (2009) 25 VR 694 construed s 319(1) as imposing a higher level of culpability. It required driving that created "a considerable risk of serious injury or death to members of the public." It also required conduct by the accused in his manner of driving which was such as to merit punishment by the criminal law. *De Montero* was applied by the Court of Appeal in Mr King's case.

The High Court by majority dismissed Mr King's appeal. The majority held that, subject to one qualification, the trial judge did not err in her direction to the jury relating to the alternative

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verdicts of guilty of offences against s 319. The decision in *De Montero* was wrong and should not be followed. The qualification was that it was unnecessary and possibly confusing for her Honour to direct the jury that, in order to prove the commission of an offence against s 319(1), the Crown did not have to satisfy them that the accused's driving was deserving of criminal punishment. That direction did not, however, constitute a departure from trial according to law or a miscarriage of justice.

- *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.*