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R. v. Bartlett

Between
Her Majesty the Queen, respondent, and
Tyler Bartlett and Bryan Monk, appellants (respondents)

[1998] O.J. No. 1608
Docket No. C20857

Ontario Court of Appeal
Toronto, Ontario
Brooke, Abella and Laskin JJ.A.

Heard: January 23, 1998.
Judgment: April 17, 1998.
(21 pp.)

Criminal law — Offences against person and reputation — Motor vehicles — Dangerous driving — Causing death or bodily harm — Elements of — Evidence and proof — Procedure — Charge or directions to jury — Direction regarding burden of proof and reasonable doubt — Appeals, indictable offences — New trials — Grounds, misdirection by trial judge.

Appeals by the accused from convictions and sentences for dangerous driving causing death and bodily harm; cross-appeal by the Crown against sentence. The first accused was driving a car owned by the father of the second accused. The second accused was a passenger. They were driving alongside a car driven by one of their friends. The friend's car went out of control and collided with another car. The friend was killed. His passengers and the driver of the other car were injured. The Crown claimed that the accident was related to the accused's common intention to spray beer on their friend's car. The accused driver steered close to the friend's car, and the friend reacted by moving on to the gravel shoulder, where he lost control. The defence alleged that the accident was caused by the accused's attempt to make a lane change without signalling. In the jury charge, the trial judge stated that the Crown had to prove the commission of an unlawful purpose, and that the second accused ought to have known that there was a risk involved in the operation of squirting beer from a moving vehicle on a busy highway. The trial judge equated dangerous driving with failing to exercise the standard of care of a prudent driver. The judge invited the jury to choose between the Crown version and the defence version of the accident. The charge on causation included a reference to the accident resulting from the friend's swerve onto the shoulder for whatever reason. There was a charge on consciousness of guilt, arising from the fact that the accused threw beer from the car before returning to the accident scene. The accused were convicted and given suspended sentences, three years probation, and five-year driving prohibitions.

HELD: Appeals from conviction allowed; new trial ordered. There were several errors in the charge to the jury. It was insufficient to say that the second accused could be liable if he ought to have known there was a

risk in beer spraying. He had to foresee the collateral offence, that being the first accused's criminally negligent or dangerous driving. The difference between civil negligence and dangerous driving was not adequately explained. There was insufficient emphasis that dangerous driving required a marked departure from the standard of care of a prudent driver. The judge erred in requiring the jury to choose between conflicting versions of events. The reference to swerving "for any reason" might have invited the jury to convict for something that did not constitute dangerous driving. The charge on consciousness of guilt was unnecessary, as the accused could have been conscious of guilt of drinking and driving offences. No substantial wrong would have arisen from any one of the errors standing alone, but their cumulative effect deprived the accused of a fair charge.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 21(1), 21(2), 686(1)(a)(i), 686(1)(b)(iii). Highway Traffic Act.
Liquor Licence Act.

Counsel:

Marie Henein, for the appellant, Tyler Bartlett.
David Schermbrucker, for the appellant, Bryan Monk.
R. Richard Connolly, for the respondent.

The judgment of the Court was delivered by

¶ 1 **LASKIN J.A.**:— On November 21, 1994, after a trial before W.B. Lane J. and a jury, the appellants, Tyler Bartlett and Bryan Monk, were found guilty of dangerous driving causing death and dangerous driving causing bodily harm, and were acquitted of criminal negligence causing death and criminal negligence causing bodily harm. On January 13, 1995, each appellant was given a suspended sentence, three years' probation, which included 800 hours of community service, and a five-year driving prohibition. Both appellants appeal their convictions. They also appeal their sentences, seeking to reduce the period of the driving prohibition. The Crown cross-appeals against sentence, seeking a custodial term.

Overview

¶ 2 On December 31, 1993, seven young friends drove from Mississauga to Ottawa to celebrate New Year's Eve. They drove in two cars. Monk drove one car, a Chevrolet owned by Bartlett's father. He had three passengers, including Bartlett, who sat in the front passenger seat. The other car, a Honda, was driven by Christopher Kahl, who had two passengers.

¶ 3 Shortly after the trip began, Kahl lost control of his Honda on the eastbound Highway 401. His car crossed the grassy median strip and collided with a Plymouth Sundance in the westbound lane. Kahl was killed; his two passengers and the driver of the Plymouth were seriously injured.

¶ 4 On the Crown's theory, the tragic accident occurred because Monk and Bartlett played a prank on the Kahl car. According to the Crown, Monk and Bartlett formed a common intention to spray beer on Kahl's car, Monk steered close to Kahl's car so that Bartlett could spray the beer, Kahl drove onto the gravel shoulder to avoid hitting Monk's car, and in doing so lost control of his own car, resulting in the accident.

¶ 5 The defence alleged that the accident was caused by Monk's attempt to make an improper lane change,

without signalling, while Kahl's car was in his blind spot. Bartlett admitted trying to spray beer on Kahl's Honda, but both Monk and Bartlett denied that they had a common plan to do so. Bartlett also testified that the beer spraying had ended when Monk made the improper lane change.

¶ 6 Monk was convicted of dangerous driving and Bartlett was convicted under s. 21(2) of the Criminal Code of being a party to dangerous driving.

¶ 7 The appellants submit that they ought to be acquitted because their convictions for dangerous driving were unreasonable. Alternatively, they submit that they are entitled to a new trial because the trial judge made the following errors in his charge to the jury:

(i) He did not adequately instruct the jury on Bartlett's liability as a party.
(ii) He erred in charging the jury that Monk could be found guilty of dangerous driving if he did not exercise the care of a prudent driver.
(iii) He erred in his charge on reasonable doubt by instructing the jury that they had to choose between the two competing versions of what occurred.
(iv) He did not adequately instruct the jury on the issue of causation.
(v) He erred in charging the jury on consciousness of guilt.

¶ 8 Bearing in mind this court's limited power of review under s. 686(1)(a)(i) of the Code, I am not persuaded that the jury's verdict was unreasonable. The appellants submit that the verdict cannot stand because a finding of a common intention to spray beer is not supported by the evidence. In my view, however, the evidence of Troy O'Regan, a passenger in the back seat of the car driven by Monk, supported a finding of common intention. O'Regan testified that about one-half hour before the accident, Bartlett suggested spraying beer on Kahl's car. Bartlett said this would be a lark. O'Regan could not recall if Monk responded to the suggestion. Bartlett admitted that he mused aloud about spraying beer on the Kahl car. O'Regan also testified that, when the two cars were side by side, either Monk or Bartlett said "Now is the time to spray beer" or "Now is our chance." Monk then manoeuvred the Chevrolet ahead of Kahl's Honda while Bartlett leaned out the window and began to spray beer. As Monk pulled his car ahead, there was a "sudden jerk to the right," followed by a readjustment to the left. According to O'Regan, this all happened very quickly. On this evidence, the jury could find that Monk swerved to the right to enable Bartlett to spray beer on the Kahl car, and therefore could reasonably find a common intention. I would not give effect to this ground of appeal.

¶ 9 I would, however, give effect to the appellants' alternative submission. In my view, the trial judge made the errors in his charge alleged by the appellants. The trial judge tried to correct some of these errors in his recharge and in answer to a question from the jury, but overall the appellants did not receive a fair charge. They are therefore entitled to a new trial. I will discuss each of the alleged errors and then their cumulative effect.

1. The Charge on Bartlett's Liability as a Party

¶ 10 The Crown alleged that Bartlett was liable as a party to Monk's criminally negligent or dangerous driving, not under s. 21(1) of the Code, but under s. 21(2), which states:

> Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission

> of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

¶ 11 Neither appellant argued that the beer spraying was not an "unlawful purpose." I therefore consider this ground of appeal on the assumption that it was an unlawful purpose. As I have stated, the Crown's position was that Monk and Bartlett formed a common intention to spray beer on Kahl's car and that Monk steered the car to the right to facilitate Bartlett's spraying of beer. Bartlett submits, however, that the trial judge erred in charging the jury on the mens rea needed to affix him with party liability under s. 21(2). The trial judge instructed the jury on Bartlett's liability in the following passage:

> Now, here the Crown is putting before you the theory that the common intention was an intent to spray beer on Mr. Kahl's motor vehicle as the driver of the other vehicle pulled up alongside it and that both parties were, on the theory of the Crown, involved in that enterprise and that Mr. Monk and Mr. Bartlett were, Monk as driver and Mr. Bartlett as the alleged perpetrator of the beer spraying, were prepared to carry out an unlawful purpose, that is the spraying of the beer and that is an unlawful act in itself under the circumstances of this case if that is in fact what happened.
> So the theory is that they were assisting each other in doing that. They must prove that one of the persons in fact committed the unlawful purpose and they must also prove that Mr. Bartlett ought to have known that there was a risk involved in that operation of squirting beer from a moving vehicle on a busy highway such as the 401. (Emphasis added)

¶ 12 The problem with this instruction is its failure to specify the risk of spraying beer. For Bartlett to be liable as a party, he had to foresee the collateral offence, Monk's criminally negligent or dangerous driving. It was not enough for the jury to be told that Bartlett could be liable if he ought to have known there was a risk in beer spraying. Bartlett could only be liable if he knew, or ought to have known, that, in carrying out their common intention to spray beer on Kahl's car, Monk would probably drive in a manner that was dangerous to the public or that showed a wanton or reckless disregard for the lives or safety of others. In other words, the trial judge should have related the risk of beer spraying to Monk's dangerous or criminally negligent driving. On the trial judge's charge, the jury, for example, could have convicted Bartlett even if it concluded that the probable consequence of the beer spraying was merely careless driving under the Highway Traffic Act.

¶ 13 In R. v. Jackson (1991), 68 C.C.C. (3d) 385 at 424-25 (Ont. C.A.), aff'd (1993), 86 C.C.C. (3d) 385 (S.C.C.), Doherty J.A. emphasized that party liability requires foresight of all the elements of the collateral offence: In my view, once it is established:

- that two persons intended to carry out an unlawful purpose, and
- that one of those persons committed an offence (apart from the unlawful purpose) in the course of carrying out that common unlawful design

> then, constitutional considerations aside for the moment, the liability of another party to that unlawful purpose for the incidental offence depends on whether he or she knew or ought to have known that the offence would probably be committed by a party to the common design in the course of carrying out that common design. Foresight that the offence would probably be committed must mean foresight that all of the constituent elements of that offence will be done or will occur.
>
> For example, if it was alleged that a party to a common unlawful design committed fraud in

> the course of carrying out that design, then the culpability of the other parties to that unlawful purpose would depend on whether they knew or ought to have known that their confederate would dishonestly deprive another of property. It would not suffice if they foresaw only that the cohort would act dishonestly. Dishonesty alone does not constitute fraud. The consequence-deprivation-must also be foreseen. (Emphasis added)

This reasoning applies to the present case. I therefore agree with Ms. Henein that the trial judge erred in his instruction to the jury on Bartlett's liability as a party.

2. The Charge on Dangerous Driving

¶ 14 In R. v. Hundal (1993), 79 C.C.C. (3d) 97 at 108 (S.C.C.), the Supreme Court of Canada concluded that the mens rea of dangerous driving requires proof of a "marked departure from the standard of care that a reasonable person would observe in the accused's situation." In R. v. Rajic (1993), 80 C.C.C. (3d) 533 (Ont. C.A.), this court, following Hundal, concluded that a trial judge misdirects the jury by telling them that they may convict for dangerous driving if the accused's driving is a departure from the standard of care of a prudent driver, having regard to all the circumstances. An instruction focussing on the standard of care of a prudent driver wrongly equates dangerous driving to the civil negligence standard.

¶ 15 Nonetheless, in his main charge, the trial judge, at least eight times, equated dangerous driving to failing to exercise the standard of care of a prudent driver, the same instruction that this court found erroneous in Rajic. The trial judge told the jury:

> The third is that the accused drove in a manner that was dangerous to the public having regard to all of the circumstances and the fourth is that the driving was dangerous to the public because the driver did not exercise the care of a prudent driver having regard to all of the circumstances and fifth that the accused was at fault by driving dangerously and failing to exercise the care of a prudent driver
>
> ...
>
> Now, the Crown must also satisfy you that the driving here was dangerous to the public because the driver did not exercise the care of a prudent driver having regard to all of the circumstances. Now, you have to consider the following things when you decide whether or not the accused here failed to exercise the care of a prudent driver.
>
> ...
>
> I guess the issue that you are going to have to make a decision on is you are going to have to ask yourselves how a prudent driver would have driven under the circumstances that were on the road on that particular day.
>
> ...
>
> You have to be satisfied beyond a reasonable doubt that the Crown has proven to you that Mr. Monk drove dangerously because he did not exercise the care of a prudent driver under the circumstances before you can come to a conclusion as to the issue of guilt. The fifth ingredient the Crown must prove is that the accused was at fault if driving dangerously and

> failing to exercise the care of a prudent driver. You have to make an assessment as to whether the driving was imprudent and make an assessment on all of the facts whether he was at fault.
>
> ...
>
> You must be satisfied that the accused drove in a manner dangerous to the public because he failed to exercise the care of a prudent driver and if you come to that conclusion you may conclude that there was fault. [Emphasis added]

¶ 16 The trial judge then tried to distinguish among civil negligence, dangerous driving and criminal negligence:

> Civil negligence occurs when there is an absence of reasonable care by the driver of a motor vehicle and this causes damage to someone else and it may not be only civil negligence, it may be a violation of a provincial statute such as careless driving. People sometimes drive off the road for no reason, but it may not attract a criminal penalty, but it may be careless driving rather than dangerous driving or criminal negligence. That is in line with the civil penalty, the civil negligence. That is negligence that is not serious enough in itself to attract the sanctions of the Criminal Code.
>
> The next more serious degree of negligence in the operation of a motor vehicle is dangerous driving and that is a criminal act. While the definition of dangerous driving under s. 249 of the Criminal Code does not actually use the word negligence, the conduct described by that section illustrates a pattern of driving that comes in the definition of negligence, but under that section the driving must amount to more than an absence of reasonable care in the circumstances, it must be dangerous to the public.
>
> Finally the most serious or blameworthy kind of negligence in the operation of a motor vehicle is criminal negligence as I described it for you and to be guilty of criminal negligence in the operation of a motor vehicle there must be more than dangerous driving. It must be conduct that shows a wanton or reckless disregard for the lives or safety of others. The driving must be a marked and substantial departure from the standard you would expect of a reasonable driver in the circumstances.

¶ 17 This discussion did not adequately explain to the jury the difference between civil negligence and dangerous driving, and certainly did not emphasize for the jury that dangerous driving requires a marked departure from the standard of care of a prudent driver. Mr. Connolly, for the Crown, fairly acknowledges that the trial judge's main charge on dangerous driving was deficient, but he submits that the trial judge cured the deficiency in his recharge and in answer to a question from the jury. I do not agree.

¶ 18 After defence counsel objected to the absence of a "marked departure" instruction, the trial judge recharged the jury as follows:

> The first matter that was raised is that in differentiating between dangerous driving and criminal negligence I gave you the explanations as to what they were, but I did neglect to indicate one particularly important part of that definition in that dangerous driving is defined as being a marked departure from the normal, that is the normal driving of a reasonable driver and criminal negligence is defined as being a marked and substantial

> departure from the normal.
> That is one of the other differences you have to consider and it is an important difference. Dangerous driving is a marked departure, but criminal negligence is a marked and substantial departure from normal driving. Combined with the other things I told you about both dangerous driving and criminal negligence those are important things I neglected to include in my original charge to you.
>
> [Emphasis added]

¶ 19 Although the trial judge finally did explain that dangerous driving requires a marked departure from normal driving, he compared only dangerous driving and criminally negligent driving and not dangerous driving and civil negligence.

¶ 20 After some deliberation, the jury requested clarification of the definition of dangerous driving. The trial judge answered by giving a correct charge on dangerous driving and correctly compared it to civil negligence.

> ... Civil negligence occurs when there is an absence of reasonable care by the driver of the motor vehicle that may cause some damage to someone else.
> The next more serious degree of negligence in the operation of a motor vehicle is dangerous driving and that is a criminal act and while the definition of dangerous driving under s. 249 of the Code does not actually use the word "negligence" the conduct described by that section illustrates a pattern of driving that comes from the definition of negligence, but under s. 249 the driving must amount to more than an absence of reasonable care in the circumstances. It must be dangerous to the public. In other words, as I indicated, it must be a marked departure from what you would expect as a reasonable person in the driving that must be dangerous to the public.

¶ 21 Still, I am not satisfied that the recharge or the answer to the jury's question cured the repeated error in the main charge. In the light of the numerous times the trial judge wrongly charged the jury on the requirements of dangerous driving, I agree with Ms. Henein that he should have expressly told the jury to disregard "the standard of care of a prudent driver" instruction in his main charge.

3. The Charge on Reasonable Doubt

¶ 22 In his main charge, the trial judge erred by inviting the jury to choose between competing versions of what occurred. He told the jury:

> Now, as I indicated, there is no issue as to the death and bodily harm so you may take those issues as proven by the Crown and you are going to have to make your own decisions as to whether or not on the facts that you have heard that the driving happened either as suggested by the Crown where the move to the right was made as a part of a common plot to squirt the beer and the swerve to facilitate that action which resulted in the Honda going off the road or whether, as the boys have both indicated, there was an intent to make a lane change, that as soon as Mr. Monk realized that he could not see the Kahl vehicle he pulled back into his own lane and he had gone only a very short distance over the line.

> The two issues you are going to have to make an assessment of as to, first of all, which version you accept and then I will try and explain to you in one circumstance that may be criminal negligence or dangerous driving and in the other it may not be.

¶ 23 The Crown acknowledges that this instruction was inadequate. Instructing the jury that they must choose between two conflicting versions runs afoul of R. v. W.(D.) (1991), 63 C.C.C. (3d) 397 at 409 (S.C.C.). The jury is not required to choose; even if they do not accept the accused's version, they must acquit if they have a reasonable doubt after considering the accused's evidence in the context of the evidence as a whole.

¶ 24 Defence counsel objected to the charge on reasonable doubt and the trial judge recharged the jury that they could have a reasonable doubt only if they were unable to choose between competing versions:

> One other thing I want to stress to you is I indicated to you in my charge that there are basically apparently two versions as to what may have happened on that day. I want to make it very clear to you, I indicated to you that you decide one version or the other version which is a clear decision. If you are unable to come to a conclusion as to which version you do accept, then in that event if you have any doubt the accused is entitled to the benefit of that doubt if it is a reasonable doubt.
> When I refer to doubt all the way through the charge I refer to reasonable doubt. If you have a reasonable doubt which leads you to the conclusion that you are not sure which version is the true version, you are to give the accused any benefit of any reasonable doubt so that not only is a clear cut yes or no as far as which version to accept, but if you are unable to come to that conclusion as to which version to accept, the accused is entitled to any reasonable doubt that you have. That is important.

¶ 25 This instruction, too, was contrary to the admonition in W.(D.) because it still asked the jury to choose between conflicting accounts. Following this instruction, however, the trial judge did recharge the jury substantially as required by W.(D.). He told them:

> I want to indicate to you four things in regard to credibility that you must consider when considering that issue. Number one is if the evidence of Mr. Monk and Mr. Bartlett is believed by you in regard to the beer issue and the driving, then you must acquit. Number two, if you are unable to make a decision as to whether you accept, you must acquit. Number three, is if you do not believe the accused's evidence but are still left with a reasonable doubt as to what happened on that particular day, then you must also acquit. Number four, is if you have no reasonable doubt insofar as the issue of credibility is concerned, it is still necessary that the essential element of the offence must be proved beyond a reasonable doubt by all of the evidence before you can make a finding of guilt, so that you may not have a problem as far as credibility is concerned, but that does not end the matter. You still have to make sure all of the elements are satisfied that I indicated to you insofar as either criminal negligence or dangerous driving are concerned before you can come to a conclusion that the accused is guilty or innocent or not guilty on all of the evidence.

¶ 26 This final direction did, I think, overcome the effect of the earlier instructions. If this were the only ground of appeal I would not give effect to it.

4. Causation

¶ 27 The Crown alleged that the beer spraying prank, not Monk's alleged improper lane change, caused the accident. On the Crown's theory, only the former could give rise to criminal liability. Therefore, it was important for the trial judge to distinguish between the prank and the improper lane change when he discussed the issue of causation with the jury. Unfortunately, the trial judge did not do so. He instructed the jury as follows:

> Now, as I have also indicated to you the Crown must satisfy you that the driving in this circumstance was the cause of the bodily harm or death to the gentleman and the best question I guess to ask yourself is would the bodily harm or death have happened if the accused had not for whatever reason made that swerve to the right?
> In other words, is it possible that that might have occurred anyway even if he had not and, as I have said, that is a factor that I think you have to give some consideration to. If there were acts or omissions that does not necessarily mean, as I indicated in discussing criminal negligence with you, that that was the cause of the accident and again you do not have to be satisfied that Mr. Monk's driving or the actions of Mr. Bartlett were the sole or principal cause of the accident if you are satisfied beyond a reasonable doubt that they were at least a contributing cause of the accident. (Emphasis added)

¶ 28 On this charge, the jury could have convicted Monk of dangerous driving for an improper lane change. The Crown concedes as much, but submits that the jury would not have been misled because earlier in his charge the trial judge outlined the Crown's theory of the beer spraying prank causing the accident. Earlier the trial judge did tell the jury that "the Crown theory is that Mr. Monk may have swerved to the right to assist Mr. Bartlett in the beer spraying and that this action resulted in the Honda going off the road ..." In my view, however, to avoid misleading the jury, the trial judge should have discussed the Crown's theory in the context of his discussion on causation. Instead, he directed the jury that they may convict if Monk's swerve to the right "for whatever reason" caused the accident. This direction may have invited the jury to convict for the wrong reason.

5. The Charge on Consciousness of Guilt

¶ 29 After the collision, Bartlett threw a case of beer from the car before returning to the scene of the accident. The trial judge charged the jury that they could infer consciousness of guilt from Bartlett having thrown the beer away:

> That is basically what the Crown urges on you, that the fact of getting rid of that beer was conduct on the part of Mr. Bartlett that could amount to an admission that he had done something wrong and that he knew that he could get into some difficulty if the beer were found and under all of the circumstances that was an indication or could be taken as an indication of a consciousness that they might in some way be responsible for the accident.
> Now, you can or you may draw that inference, but you also have to be very cautious. You have to give Mr. Bartlett's explanation very serious consideration before you come to the conclusion that you should draw an inference from the fact that the beer was thrown out of

the car and that an inference of consciousness of guilt might be drawn from that act.

¶ 30 There was evidence at trial that Monk pulled over and stopped the car to permit Bartlett to throw the beer away. At the Crown's request, the trial judge recharged the jury that they could also infer consciousness of guilt from Monk's driving after the accident. He recharged the jury as follows:

> The other issue is consciousness of guilt. I indicated to you that throwing the beer out of the car might be an indication that it was a consciousness of guilt. The Crown argued quite strenuously and I neglected to bring this to your attention that the movement to the right after the accident by Mr. Monk may also amount to consciousness of guilt depending on how you view the evidence, but you must of course consider Mr. Monk's explanation of why that movement was made and make your own determination as indicated as to whether or not you should draw that inference and if you do that is only one of the many factors that you have to consider.

¶ 31 In my view, the appellants' conduct after the accident was of dubious probative value on the question of their guilt or innocence. Both Bartlett and Monk admitted to having committed a number of offences under the Liquor Licence Act, including unlawful consumption, conveying liquor in a vehicle and, in Bartlett's case, drinking under age. The appellants' conduct after the accident seems equally consistent with their admitted culpability for these Liquor Licence Act offences or with their panicking because of this horrible accident, as it is with their culpability for dangerous driving. I think it would have been preferable for the trial judge not to have charged the jury on consciousness of guilt. R. v. Marinaro (1996), 105 C.C.C. (3d) 95 (S.C.C.). Having decided to do so, however, the trial judge should at least have spelled out the competing inferences for the jury. His failure to do so was an error. Admittedly, the impact of the error was minimized because of his instruction on how the jury should use the evidence, namely, as "one of many factors" they had to consider. Still, in my view, the trial judge erred in his consciousness of guilt instruction.

Cumulative Effect of the Errors

¶ 32 If any of these errors had stood alone, I would have been inclined to apply the curative provisions of s. 686(1)(b)(iii) of the Code and hold that no substantial wrong had occurred. The charge, however, contained too many errors to apply s. 686(1)(b)(iii). Taken together, the cumulative effect of these errors deprived the appellants of the fair, accurate and understandable charge to which they were entitled. In the light of these errors their convictions cannot stand.

Conclusion

¶ 33 Therefore, I would allow the appellants' appeals, quash their convictions and direct a new trial on the charges of dangerous driving. It is unnecessary to consider the sentence appeals. I note, however, that Monk has performed all 800 hours of his community service and Bartlett has performed 400 hours of his community service. Monk has served three years of his driving prohibition and Bartlett has served just over two years of his driving prohibition.

LASKIN J.A.
BROOKE J.A. — I agree.
ABELLA J.A. -- I agree.

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