

CANADA / JUDGMENT

R. v. Kerr

2025 ONCA 804

COURT

Court of Appeal for Ontario

DECIDED

21 November 2025

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R. v. Kerr Collection Decisions of the Court of Appeal Date 2025-11-21 Neutral citation 2025 ONCA 804 Docket numbers COA-25-CR-0138, COA-25-CR-0444 Judges Huscroft, Grant; George, Jonathon C.; Gomery, Sally A. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Kerr, 2025 ONCA 804[1] DATE: 20251121 DOCKET: COA-25-CR-0138 & COA-25-CR-0444 Huscroft, George and Gomery JJ.A. BETWEEN His Majesty the King Respondent and Demar Kerr Appellant Dan Stein, for the appellant Matthew Morley, for the respondent Heard: November 13, 2025 On appeal from the convictions entered by Justice Gillian E. Roberts of the Superior Court of Justice, sitting with a jury, on November 2, 2023, and the conviction entered by Justice Gillian E. Roberts of the Superior Court of Justice, on November 21, 2023. REASONS FOR DECISION

- [1] The appellant was initially convicted of dangerous driving causing death and five counts of dangerous driving causing bodily harm. He was subsequently convicted of failure to comply with a term of bail based on the jury findings that resulted in the first conviction. After hearing oral argument, we dismissed the appeals from the bench, with reasons to follow. These are our reasons.
- [2] The appellant argues that, in her charge to the jury in the dangerous driving trial, the trial judge failed to distinguish between the actus reus and the mens rea of the offences of dangerous driving causing death and dangerous driving causing bodily harm, giving rise to the risk that the jury would conflate these two elements.
- [3] We disagree.
- [4] The charge generally followed the model instruction in Watt's Manual of Criminal Jury Instructions, 2024 ed. (Toronto: Thomson Reuters, 2024), at pp. 767-769 (Final 320.13-C). At the outset of her instructions on the dangerous driving offences, the trial judge instructed the jury on how it should decide whether the appellant drove in a manner that was dangerous to the public: To decide whether Mr. Kerr operated the motor vehicle in a manner that was dangerous to the public, you must consider all the circumstances including, but not limited to, evidence such as:
- the nature, condition and use of the place where the driving occurred;

- the amount of other traffic, both vehicles and pedestrians, actually there at the time; and
 - the amount of other traffic, both vehicles and pedestrians, that might reasonably be expected to be there at the time.
- [5] This instruction focuses on the actus reus element of the offence.
- [6] Following this instruction, the trial judge elaborated on the fault element, that is, whether the appellant's driving constituted a marked departure from the standard of care expected of a reasonable person in the appellant's circumstances: If you are satisfied that a reasonable person would have foreseen the risk of driving the way Mr. Kerr did, and taken steps to avoid or mitigate the risk, ask yourselves whether Mr. Kerr's failure to foresee the risk posed by his driving, and take steps to avoid or mitigate the risk, was a marked departure from the standard of care expected of a reasonable person in Mr. Kerr's circumstances.
- [7] This instruction, which reprises a passage in *R. v. Roy*, 2012 SCC 26, [2012] 2 S.C.R. 60, at para. 36, focuses on the mens rea element of the offence. The remaining instructions elaborated on how the jury should determine whether the appellant's driving was a marked departure and reviewed the evidence relevant to this issue.
- [8] It was clear from the instructions that the jury had to determine both whether the appellant's manner of driving was objectively dangerous and whether it was a marked departure from what a reasonable, prudent driver would do in the same circumstances. This is particularly so when the instructions are considered in conjunction with the parties' closing arguments.
- [9] Read as a whole, the instructions equipped the jury to decide the case: *R. v. Bruzzese*, 2023 ONCA 300, 167 O.R. (3d) 81, at para. 12, citing *R. v. Hassanzada*, 2016 ONCA 284, 130 O.R. (3d) 81, at para. 105. There was no risk that the jury would convict the appellant without determining that he was driving in an objectively dangerous way. There was likewise no danger that the jury would infer that the appellant was criminally liable solely because he hit another vehicle and skidded into a group of pedestrians, killing one and seriously injuring five others. The trial judge cautioned the jury that it should focus on the manner in which the appellant operated the motor vehicle, not who caused the collision or its consequences.
- [10] We are unpersuaded that the jury's question about the definition of dangerous driving under the Highway Traffic Act, R.S.O. 1990, c. H.8 suggested confusion about the instructions. Crown and defence counsel at the time agreed that the question likely stemmed from a misapprehension that the appellant had been charged under the Act as, in his cross-examination of a police officer and in his closing submissions, defence counsel had repeatedly mentioned that the driver of the vehicle with which the appellant collided had been charged under the Act. Counsel agreed that the jury should be told that the appellant was charged with dangerous driving under the Criminal Code, R.S.C. 1985, c. C-46 not the Act, and that they must determine whether his driving had been dangerous based on the

instructions already given.

[11] Both conviction appeals were accordingly dismissed. The appellant filed a notice of abandonment of his sentence appeal. The sentence appeal was therefore dismissed as abandoned. “Grant Huscroft J.A.” “J. George J.A.” “S. Gomery J.A.”

[1] This appeal is subject to a publication ban pursuant to s. 486.5 of the Criminal Code, R.S.C. 1985, c. C-46.

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