



31 July 2013

## PRESS SUMMARY

**R v Hughes (Appellant) [2013] UKSC 56**  
*On appeal from: [2011] EWCA Crim 1508*

**JUSTICES:** Lord Neuberger (President), Lord Mance, Lord Kerr, Lord Hughes, Lord Toulson

### BACKGROUND TO THE APPEALS

This case concerns the scope of the new offence created by section 3ZB of the Road Traffic Act 1988 (“the 1988 Act”). This new section was added by section 21(1) of the Road Safety Act 2006 (“the 2006 Act”). It provides: “A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under- (a) Section 87(1) of this Act (driving otherwise than in accordance with a licence); (b) Section 103(1)(b) of this Act (driving while disqualified), or (c) Section 143 of this Act (using a motor vehicle while uninsured or unsecured against third party risks).” On conviction on indictment, this offence carries imprisonment for up to two years.

On a Sunday afternoon in October 2009 the appellant was driving his family home in a campervan along the A69 towards Newcastle. Road conditions were normal and the appellant’s driving was faultless. The speed limit was 60 mph and the appellant was travelling at a steady speed of 45-55mph. At the same time Mr Dickinson was driving in the opposite direction. Mr Dickinson was driving erratically- his car was veering all over the road, twice crossing into the wrong lane before smashing into the appellant’s campervan as it rounded a bend. The appellant and his family survived. However, Mr Dickinson suffered injuries as a result of the impact that proved to be fatal.

Mr Dickinson was found to have had a significant quantity of heroin in his system and was a drug user. He was also overtired, having worked a series of 12 hour nightshifts in a power station in Largs, on the west coast of Scotland. He had already driven to Largs that day and had completed approximately 230 miles of his 400 mile return journey when the collision happened. At the time of the collision the appellant did not have a driving license and was not insured, both of which are offences under the Road Traffic Act 1988. Neither offence carries a sentence of imprisonment.

It was accepted by the prosecution that the appellant was in no way at fault for the accident and could not have done anything to prevent it. The blame was entirely with the driving of Mr Dickinson, yet the appellant was prosecuted under section 3ZB of the 1988 Act for causing the death of Mr Dickinson whilst driving uninsured and without a license. At trial the judge directed the jury that they could only find the appellant guilty if they found he had contributed in a substantial way to Mr Dickinson’s death i.e. in a way that was more than minimal. The prosecution appealed this ruling and the Court of Appeal, which felt itself bound by the decision in *R v Williams* [2010] EWCA Crim 2552, held that the prosecution did not have to prove any element of fault on the part of the appellant, his mere involvement in the fatal collision would be sufficient to commit the offence.

## JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Hughes and Lord Toulson jointly give the judgment of the court.

## REASONS FOR THE JUDGMENT

If the Court of Appeal were correct, then in this case the appellant would be criminally responsible for Mr Dickinson's death despite not being at fault at all for the collision. In addition, if any of the appellant's family had died he would also be criminally responsible for their deaths despite the fact that if Mr Dickinson had survived he would have been guilty of causing death by, at the very least, careless driving when unfit to drive through drugs. [5- 6].

It would plainly have been possible for Parliament to legislate in terms which left it beyond doubt that a driver was made guilty of causing death whenever a car which he was driving was involved in a fatal accident, if he were at the time uninsured, disqualified or unlicensed. It did not and instead used expression "causes...death...by driving". This imports the concept of causation [19 - 20]. This is not a case where the concept of a deliberate intervening act applies to break the chain of causation. Mr Dickinson did not deliberately set out to kill himself. This is a case where there are potentially multiple causes of the death. The question is whether the appellant's driving was in law a cause [22]. It was not; it was simply an event "but for" which the collision would not have happened. That would be much the same as saying, if the other driver had hit a tree rather than the defendant's vehicle, that whoever planted the tree caused the death. The law draws a distinction between things which are 'but for' circumstances which are just the background to an event, and things which truly cause that event.

In *R v Williams* it was held that s.3ZB must catch cases that did not fall under s.2B (causing death by careless driving) but that case did not focus on the meaning of "causes...death...by driving". It does not follow from the fact that section 3ZB contains no requirement that the defendant driver should have committed the offence of careless or inconsiderate driving that he is not required to have done or omitted to do something in the driving of the car which has contributed to the death, before he can be held to have caused it by his driving [24]. The gravity of a conviction for homicide, for which the sentence may be a term of imprisonment, is such that if Parliament wishes to displace the normal approach to causation recognised by the common law, and substitute a different rule, it must do so unambiguously [27].

There is no logical or satisfactory intermediate position between holding (a) that the law imposes guilt of homicide whenever the unlicensed motorist is involved in a fatal accident and (b) that he is guilty of causing death only when there is some additional feature of his driving which is causative on a common sense view, and the latter entails there being something in the manner of his driving which is open to proper criticism. The statutory expression cannot, the Court concludes, be given effect unless there is something properly to be criticised in the driving of the defendant, which contributed in some more than minimal way to the death. It is unwise to attempt to foresee every possible scenario in which this may be true but cases which might fall under s.3ZB but not s.2B (causing death by careless or inconsiderate driving) might, for example, include driving slightly in excess of a speed limit or breach of a construction and use regulation [32].

The trial judge's ruling is reinstated. and the matter returned to Newcastle Crown Court.

*References in square brackets are to paragraphs in the judgment*

## **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)