

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

Applicant

- and -

EDWARD ROBINSON

Defendant

)
)
) Alfred Creed,
) Counsel for the Crown
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)

) Ken Marley,
) Counsel for the Defendant
)
)

) **HEARD:** February 20, 21 and 22,
) 2007

REASONS FOR JUDGMENT

Cusinato, J.

[1] The offences before this court as charged deal with a tragic result from a motor vehicle accident. This concerns the deaths of two young women, Sarah Moulant age 19, and Sara Leili age 18, involved in a rear end motor vehicle

collision on Highway 401 West at or near the Scane overpass in the Municipality of Chatham-Kent, Southwest Region. As it concerns the death of these young women in a motor vehicle collision, it is significant to note that this end in itself, the deaths of these young women is not alone a means of establishing the offences charged. It is but one factor in the totality or culmination of the events charged at the relevant time for the court to determine if the offences in the indictment are established beyond a reasonable doubt.

[2] As to the counts charged before this court specifically relating to each deceased individual who came to an early demise, four separate counts have been listed in the indictment. As to each separate count referring to criminal negligence in reference to each of the deceased individuals named, as well as the separate charges of dangerous driving, these latter charges are not generally a separate specific charge or count in an indictment. The rationale for this conclusion is that by law dangerous driving is an included offence in the charge of criminal negligence. Generally in a trial of criminal negligence involving the operation of a motor vehicle the judge or jury who are unable to conclude that the specifics of the more serious offence criminal negligence as provided by the *Criminal Code* in its statutory application together with the common law have not been satisfied beyond a reasonable doubt, then the judge and jury must turn their minds to whether the included offence of dangerous driving is established. The charges as framed as separate counts, do not however affect the validity of the indictment. I shall therefore deal with the specific counts as set out in the terms of my analysis of the applicable law.

[3] To digress from the charges themselves as framed, it is important to state that their application as set out in the *Criminal Code* and whether one or either

offence are met within the specific language of the sections of the *Code* creates one of the most difficult areas of our law.

[4] Criminal negligence alone has many variables in the manner in which such an offence may be committed. Within the context of the indictment before this court, each count of criminal negligence set out in the indictment provides specifics as to the offence charged against the accused through the commission or omission of certain actions, in this instance in the operation of a motor vehicle causing death.

[5] I propose at this point to deal with the law and its application to the evidence to determine if the facts establish the offence charged, beginning with the more serious criminal negligence.

[6] For simplification, while we are dealing with separate counts, providing for each young woman who came to her death as a result of the motor vehicle accident on July 22, 2005, I shall refer to the application of the law for consideration globally as it relates to each count.

[7] Criminal negligence as defined by s.219 of the *Criminal Code* provides for the proof of such offence the actions of the person charged, in doing anything or omitting to do anything; that it is his duty to do – shows wanton or reckless disregard for the lives and safety of other persons. As stated in the section – duty means a duty imposed by law.

[8] As required in the proof of all crimes, “*mens rea*” a guilty mind or intent is a pre-requisite, but this intent may be established by inference either by subjective evidence of the specific intent to do an act or as stated by case authority, by the

modified objective test relative to a driving offence. For the objective test the foresight, as to the actions of the individual charged, in my view may be examined. It is in the operation of a motor vehicle where the real possibility of risking harm to the public who use the highway to which we may apply the modified objective test. It is my view, as earlier stated that foresight may be used to determine the actions of the accused on the issue of awareness.

[9] While it is generally inferred that a person by his actions intends those actions and may carry out such action without regard to the consequences a court must be careful to examine whether the person objectively viewed utilizing the standard of a reasonable man, applying it to the accused appreciates the natural consequences of his acts or is indifferent to the consequences.

[10] The standard therefore to apply in negligence is that of a reasonable person applying it to the accused and the facts in evidence. As confirmed in the decision of *Regina v. Menzes* (Hill, J.) 2002 O.J., No. 551, p.21:

“If a person commits a manifestly dangerous act, it is reasonable absent indications to the contrary that he/she failed to direct his/her mind to the risk and the need to take care.”

[11] Although our courts have struggled with this issue for many years, it appears that a majority in the Supreme Court of Canada has concluded that the “*mens rea*” or guilty mind for the crime of criminal negligence can be determined objectively from the conduct of the accused.

[12] That is in the operation of a motor vehicle whether the accused recognized his actions and ran an obvious and serious risk to the lives and safety of others or alternatively gave no thought to the risk involved.

[13] The mental element requires only the modified objective test in the evidence as to the foresight of harm to the public, but such concept must be consistent with that individual pursuing his conduct with an operating mind. In other words that the accused appreciates or should appreciate what he is doing relative to his actions and the possible consequences, and proceeds without care as to the consequences.

[14] Criminal negligence may be identified where the accused fault lies in his failure to direct the mind to the risk, which the reasonable person would appreciate. The test is what should have been in the accused's mind, not what was there, applying this test to the reasonable person with an operating mind.

[15] In a situation of criminal negligence, the negligence must constitute a "marked and substantial departure" and this may be identified by the actions of an accused which I have stated earlier as to my view may precede the operation of the motor vehicle both at the relevant time prior to the accident and at the relevant time of the accident.

[16] To turn to dangerous driving as provided by s.249(1)(a) of the *Criminal Code*, the *Code* sets out the specifics required for this offence. To paraphrase –

The operation of a motor vehicle, in a manner dangerous to the public having regard to

- all the circumstances
- nature, condition and use of the place, where the vehicle is operated
- the amount of traffic – at the time
- that is or might reasonably be expected – to be
- at the place, ie. where the vehicle is operated

[17] Equally important, as it applies to the above specifics is whether the person who assumed the driving under the circumstances that prevailed was aware of risk and assumed it.

[18] In reference then to dangerous driving it is a marked departure from the standard of conduct of a reasonably prudent driver, under all the circumstances, this presumes the assumption of risks which may be known to him. This principle as set out by a strong minority judgment confirmed by four judges in *Regina v. Creighton* (1993), 83 C.C.C. (3rd), 346 at p. 362 (S.C.C.); speaks to this issue in the following terms and is persuasive concerning the issues before this court:

“Human frailties which may affect the capacity of an accused to recognize the risks of unlawful conduct must be considered, however, not because they result in the accused believing in an incorrect set of facts, but rather because they render the accused incapable of perceiving the correct set of facts. It is, however, only those human frailties which relate to an accused’s capacity

to appreciate the risk in question that may be considered in this inquiry....

....

Human frailties encompass personal characteristics habitually affecting an accused's awareness of the circumstances which create risk. Such characteristics must be relevant to the ability to perceive the particular risk....

....

It should be emphasized that the relevant characteristics must be traits which the accused could not control or otherwise manage in the circumstances. For example, while a person with cataracts cannot be faulted for having reduced vision, he or she may be expected to avoid activity in which that limitation will either create risk or render him or her unable to manage risk which is inherent in an activity (driving, for example). The reasonable person is expected to compensate for his or her frailties, to the extent he or she is conscious of them and able to do so.

This general discussion is not intended to set out an exhaustive definition, but rather to lay the groundwork for examining the different factual contexts which may arise. Two central criteria in this regard are (1) the gravity of the offence, and (2) the inherent purposefulness of the conduct involved.”

And further in *Regina v. Hundal* (1993), 79 C.C.C. (3rd) 108 (S.C.C.), in reference to dangerous driving, the majority judgment written by Justice Cory, he had the following comment:

“In summary, the *mens rea* for the offence of dangerous driving should be assessed objectively but in the context of all the events surrounding the incident. That approach will satisfy the dictates both of common sense and fairness....

....

It follows then that a trier of fact may convict if satisfied beyond a reasonable doubt that, viewed objectively, the accused was, in the words of the section, driving in a manner that was “dangerous to the public, having regard to all the circumstances, including the nature, condition and use of such place and the amount of traffic that at the time is or might reasonably be expected to be on such place”. In making the assessment, the trier of fact should be satisfied that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in the accused’s situation.

Next, if an explanation is offered by the accused, such as a sudden and unexpected onset of illness, then in order to convict, the trier of fact must be satisfied that a reasonable person in similar circumstances ought to have been aware of the risk and of the danger involved in the conduct manifested by the accused. If a jury is determining the facts, they may be

instructed with regard to dangerous driving along the lines set out above....

....

Although the fault required by the subjective test is arguably greater than that required by the objective test, either is capable of establishing the *mens rea* of a criminal offence. As Professor Stuart states, “not thinking, or not thinking properly” can be a sufficient basis for attributing fault to an accused (Stuart, in “Criminal Negligence: Deadlock and Confusion in the Supreme Court”, 69 C.R. (3rd) 331 (1989), at p.333). In his view, when engaging in dangerous behaviour,

...a failure to exercise one’s capacities and powers to bring about and control conduct and its risks is a culpable failure, and sufficiently morally culpable to attract the criminal sanction. In terms of deterrence, on this notion, we can and do teach ourselves to take care when we know that, if we do not, we will be punished.”

[19] Viewed objectively, did the accused exercise the appropriate standard of care. The test here may well be what the accused should have known in the circumstances.

[20] It is within these concepts that we must review the degree of culpability as to the offences charged, as it relates to the events both before and during the operation of the motor vehicle.

[21] To focus on the issue as it relates to the accused the events in the hours preceeding midnight of July 21, 2005 and 2:00 a.m. July 22, 2005 must be examined. We must ask whether the accused with his past history as testified to by the accused and his cousin, Csa Miles, re his admission to hospital after earlier events specifically May 2005 of an erratic driving episode caused by a bipolar disorder, he should or ought have been aware that his operation of a motor vehicle at any given time could be a danger to the public; particularly to those lawful users of the highway.

[22] In applying the modified objective test pronounced by McLaughlin J. as she then was, now Chief Justice, to the actions of an accused both relevant to the period before and at the time of the driving, it is here we must determine if the offences charged are established. It is the voluntary operation or continued operation of a motor vehicle with the accused's past history that must be examined.

[23] We are aware from the evidence that prior to the collision with the Jetta causing the death of the two young women named, he was operating the vehicle on Highway 401 in a westerly direction having left the Queen Elizabeth Highway: with the original intent to go to Toronto, but it may be inferred he got lost in his direction.

[24] That his operation of the vehicle at the time, it is noted occurred as explained by the accused without taking his prescribed medication for his condition, which medication was found in his vehicle after the collision.

[25] It is the voluntary operation or continued operation of the motor vehicle prior to the collision of July 22, 2005 without the taking of the medication prescribed for his condition, or removing himself from the operation of his vehicle

on the highway that evening of which he knew or ought to have known because of his appreciation of his earlier history, that he could be a danger to the public.

[26] To put this concept another way, whether the accused because of his medical condition, and his pre-existing problems, while operating a motor vehicle from time to time, could foresee the dangers which could result, including harm not only to himself but others.

[27] As earlier stated criminal negligence has many variables in the manner in which such offence is established.

[28] Within the provisions of the *Criminal Code*, in addressing “*mens rea*” and dangerous driving as stated by Cory J. in *Regina v. Hundal*, Supra, p. 104, a truly subjective test seeks to determine what was actually in the mind of the particular accused at the moment the offence is alleged to have been committed.

[29] Justice Cory later in his judgment then proceeds to emphasize the test for negligence: “...the test for negligence, is an objective one requiring a marked departure from the standard of care of a reasonable person. There is no need to establish the intention of the particular accused. The question to be answered under the objective test concerns what the accused, “should” have known. The potential harshness of the objective standard may be lessened by the consideration of certain personal factors...”

[30] Within this analysis as confirmed by McLaughlin J. in *Regina v. Creighton*, Supra, at p. 392, couched in the modified objective test; the now Chief Justice states “This may consist in carrying out the activity in a dangerous fashion,

or in embarking on the activity when in all the circumstances, it is dangerous to do so”.

[31] As confirmed by La Forest J., in concurring in this majority judgment, on a different point relative to an unlawful act causing death resulting in an offence of manslaughter, he stated at p.368 of *Regina v. Creighton*:

“I accept that Parliament can and sometimes does require only an objective standard of *mens rea* for offences intended to regulate a particular form of activity”.

In Justice La Forest’s conclusion to this principle in *Regina v. Hundal*, p.97, in his application to this concept, it would be his conclusion that while the modified objective standard properly applies to dangerous driving, this is a provision within the *Criminal Code* which he holds differs from the general offence of criminal negligence. This offence he would conclude more properly would require subjective *mens rea*. (The blameworthy mind at the time of the commission of the act).

[32] In addressing the specifics to an offence of dangerous driving, the court found on the facts of the case *Regina v. Hundal*, *Supra*, 1993, that involved an offence of driving dangerously, that the wording of s.249, the offence, prohibiting operation of a motor vehicle, “in a manner that is dangerous to the public having regard to all the circumstances suggest an objective standard.” The *mens rea* for the offence assessed objectively but in the context of all the events surrounding the incident. While as a general rule, personal factors need not be taken into account, if an explanation for the marked departure from the standard of care of a reasonable person is offered by the accused, such as a sudden and

unexpected onset of illness, such evidence must be considered relevant to the above concepts. The trier of fact must be satisfied if a reasonable person in similar circumstances ought to have been aware of the possible or probable risks and the foreseeable danger in the conduct manifested by the accused, with his prior medical history, specifically in the operation of the motor vehicle, without his medication for whatever reason the accused may wish to justify.

[33] Expressed in this way, the question to be answered under the modified objective test concerns what the accused “should” have known, or been aware of from his past conduct and medical condition. This may be applied to the factual circumstances and the manner of his driving specifically to dangerous driving at the relevant time resulting in the deaths of two young women.

[34] From our examination and analysis of the evidence, what we have before the court is excessive speed, the failure of the motor vehicle’s operator to see the stopped Jetta and its flashers, and/or other traffic that accounts for the failure of braking or to take evasive action prior to impact. With the above evidence, if we accept the accused testimony of his unawareness of the warning signs and the various other indices of the dangers before him as expressed by the other witnesses just prior to Scane Road, we must address the general moral culpability carried into the act. That issue relates to the more serious offence of criminal negligence whether the accused’s conduct is tantamount to a reckless disregard for the law and others. On this question of culpability for the offence of criminal negligence as provided within the *Criminal Code*, while I conclude the modified objective test may be applied, it must be governed by the facts.

[35] As confirmed by La Forest J. in *Regina v. Hundal*, Supra, p.99, in his comparison of the two separate offences before this court, it is his view that dangerous driving with its specifics written into the *Criminal Code*, is in its wording and object a quasi regulatory offence as intended by Parliament. Viewed from the modified objective standard re *mens rea*, the actions of a motorist itself prior to a specific event, in this case the collision that ensued, upon a review of the facts if in its final determination satisfies proof of an element of fault then the act should of itself meet the requirements of s.7 of the *Charter of Rights*, and the principles of fundamental justice. From this analysis the court should then determine whether or not the offence is met and satisfied. As confirmed by Cory J. in this same judgment *Regina v. Hundal* at p.105, as it concerns dangerous driving; he addresses the requirements as it relates to a licensed driver and puts it within the following context and its effect concerning those granted a licence, it is ...

“to demonstrate those who drive are mentally and physically capable of doing so” ...

Where - “Licensed drivers choose to engage in the regulated activity of driving. They place themselves in a position of responsibility to other members of the public who use the roads”.

[36] From our review of the common law, on the question of the offences of criminal negligence as charged, while the modified objective test may apply, within the circumstances of the facts before me, I am not satisfied beyond a reasonable doubt, those charges are met.

[37] It seems evident within the provisions of s.219 of the *Criminal Code*, regarding criminal negligence to apply it to the operation of a motor vehicle, the

Crown must satisfy that the accused showed a wanton or reckless disregard for the lives or safety of other persons.

[38] To cite earlier principles enunciated by our courts on the issue of criminal negligence, not on the issue of subjective versus the modified objective test to establish “*mens rea*” but rather the degree in difference between the offences of criminal negligence in the operation of a motor vehicle and dangerous driving, I refer to the passage in *Regina v. Titchner* (1961), 131 C.C.C., 64 (C.A.) at p.4 of the Quicklaw report:

“In Greenspan, Middleton J. A. used this language at pp.177-8
Can.C.C., p.743 D.L.R., p.162 O.L.R.:

I think the great weight of authority goes to show that there will be no criminal liability unless there is gross negligence, or wanton misconduct. To constitute crime there must be a certain moral quality carried into the act before it becomes culpable. In each case it is a question of fact, and it is the duty of the Court [the jury] to ascertain if there was such wanton and reckless negligence as in the eye of the law merits punishment. This may be found where a general intention to disregard the law is shown, or a reckless disregard of the rights of others.

I do not suggest that a trial Judge should read to the jury the extracts I have quoted. To the legal mind, they convey the elements essential to constitute a particular act or omission “criminal negligence”. The very words “criminal negligence’

may lead a jury to think that only a difference of degree distinguishes criminal from civil negligence. But as Middleton J.A. pointed out criminal negligence connotes a difference in quality as well as a difference in degree. (“A certain moral quality must be carried into the act.”) The accused’s state of mind immediately antecedent to or contemporaneous with his act or omission must be considered and, of course, this may be inferred from the conduct of the accused and the other circumstances. Before a jury can properly return a verdict of guilty, they should be satisfied beyond a reasonable doubt that the accused acted either (a) with the deliberate intention of doing or omitting to do something which it was his duty to do, the consequences of which he knew or should have known would endanger the lives or safety of others or (b) with such disregard for the lives and safety of others as would indicate that he was heedless of what the consequences of his conduct might be.”

And further the earlier decision of *Regina v. Barron* (1985), 23 C.C.C. (3rd), p.544, in dealing with the concept of criminal negligence the Ontario Court of Appeal in the majority judgment of Goodman J.A. in circumstances giving rise to a danger where the accused gave a slight push to a friend on the stairs resulting in his death had this to say at p.550:

“For behaviour to constitute criminal negligence, there must be a marked and substantial departure from the standard of a reasonable person”.

[39] I now wish to turn to the facts and the issue as it relates to dangerous driving.

[40] On the evidence before this court there is no expert testimony, or to put it another way no specific medical evidence to the contrary, that during the operation of the Robinson motor vehicle on July 22, 2005 the accused was unable to appreciate the nature and consequences of his acts.

[41] In this regard I appreciate defence counsel’s submission that at the relevant time both before and during the operation of the motor vehicle it would be impossible to obtain any expert testimony that would be of assistance to the court.

[42] What we are aware of is the testimony of Csa Miles and the accused, that the accused at the relevant time was under medication for a bipolar condition. This medication identified by Exhibit 10, we are aware was seized by Constable Maine on the evening in question after his arrest. It is the accused’s failure to take his medication or to direct his mind to the risks he ought to have known, that may account for the tragedy that fatal evening. The evidence before me is not tantamount to an inability for the accused to form the intent to operate his motor vehicle at the relevant time, or to appreciate his condition.

[43] This failure is significant when the history of Mr. Robinson is considered as to his medical condition. For many years prior to the accident the accused suffered, as he testified, from a diagnosed bipolar condition from what may be described as highs and lows. This has been stated in testimony as his proceeding from a euphoric state to a state of manic depression.

[44] Once again as to this condition there is no specific evidence that the accused could not form a specific or general intent relative to his action of operating the motor vehicle and recognizing the dangers from his condition. It has been noted in the evidence that prior to the July 22 incident the accused was placed in the hospital for evaluation, namely May 2005.

[45] On the accused's own testimony, there is admission of a fairly long history of problems related to his bipolar disorder. In fact the accused admitted he has been under medication for such condition since the year 1999, although this medication and its dosage may have been changed from time to time, there is no evidence it was within weeks of the accident.

[46] From the court's review of the events in the early morning hours of July 22, 2005, it is clear from the accused's testimony, that while he may have been driving toward Chatham or in general westerly on Highway 401, it appears from his testimony he had no specific destination, or reason for so doing other than perhaps to drive as he often does to relax his stress.

[47] Significant to the entitlement to operate a motor vehicle is the fact that a motor vehicle not properly operated may of itself constitute a lethal weapon, not only to its operator but under the circumstances the public, which includes anyone

it may be expected to be on the Highway or in the area under the prevailing circumstances.

[48] We know from the testimony that in the early hours of the particular evening there was construction over Highway 401, the construction of an overpass bridge at Scane Road, within the Municipality of Chatham-Kent.

[49] As stated in the evidence of the witnesses called, as a vehicle proceeded west at and before the point of collision, a number of signs indicated construction ahead with the addition of several large illuminating interchanging electronic sign stating, Traffic Stopped, Prepare to Stop. There is no specific evidence that the signs were not visible in that they were located for traffic moving westerly beginning at a minimum distance of 2.3 kilometres east of the area of impact just west of Highway 21, Exhibit 5.

[50] The accused in his testimony admits he observed none of these signs. Further the fact there was a long line of traffic stopped ahead, because of the construction, including the vehicle in which the young women were located and stopped in the passing lane with either a flashing right signal or four-way flashers, based on the evidence were not observed by him. Finally the accused acknowledgement he was travelling too fast in answer to a question put to him by the witness Shoreswan Goro after the collision are all the subject of consideration on this offence. The accused's evidence is that at the relevant time he was driving in a relaxed state and observed none of these cautions prior to collision.

[51] Added to this evidence we have the testimony of Constable Armstrong who downloaded a module taken from the Robinson vehicle. It translated from his evidence the speed of the vehicle prior to collision through a

sensory diagnostic module that was downloaded to provide this information, Exhibit 7. That speed has been estimated at variables, but in the area of 156/157 kilometres per hour prior to impact. Although I need not accept the evidence of the reconstruction expert Constable Armstrong, who testified, there is nothing within the evidence that specifically establishes his evidence should be rejected. While some issue was taken whether the accused's vehicle was in cruise control the accused could only testify when this question was put to him as to his usual habit not to use it, but he has no specific recall.

[52] Added to this evidence, we have the evidence of Henry Vander Linde as well as the other witnesses who were called that they heard application of breaks or skids, or did they observe evasive action prior to collision. After the examination of the highway, by the police, they did not observe any skid marks on the roadway.

[53] As testified to by Henry Vander Linde, the Jetta in which the young women were occupants and the Chevy Tahoe operated by the accused in Vander Linde's words, hit so hard that after collision were fused as one (see Exhibit 5, photos p. 2). As this witness testified, to reiterate he heard no application of brakes, but did observe the flash of light and a tremendous crash, with a simultaneous explosion and flying glass debris. This tremendous impact we know caused the death of these two young women instantly.

[54] Turning to the issue of dangerous driving and my earlier comments applying the modified objective test to count number one and two, particularly as it applies to the issue of awareness in the operation of the motor vehicle that evening, and his actions. I conclude I am satisfied beyond a reasonable doubt the offence

of dangerous driving as to each of these counts is made out either because he failed to observe what was there to be seen, as he was aware that with his condition, he should not have been operating the motor vehicle.

[55] A driver who fails to take his medication, or who may have a bipolar attack, if this is a partial or direct cause of resulting death in a motor vehicle accident cannot avoid the consequences, of the impairment respecting his ability to drive, by saying, he did not intend to place himself or to get into that condition. As pointed out by McLaughlin J. in *Regina v. Creighton*, p.387,

“Where individuals engage in activities for which they lack sufficient knowledge, experience, or physical ability, they may be properly found to be at fault, not so much for their inability to properly carry out the activity, but for their decision to attempt the activity without having accounted for their deficiencies. The law expects people embarking on hazardous activities to ask questions or seek help before they venture beyond their depth. Thus even the inexperienced defendant may be properly found to be morally blameworthy for having embarked on a dangerous venture without taking the trouble to properly inform himself or herself. The criminal law imposes a single minimum standard which must be met by all... provided that they enjoy the requisite capacity to appreciate the danger, ...judged in all the circumstances of the case, Without a constant minimum standard, the duty imposed by the law would be eroded and the criminal sanction trivialized.”

On the issue of voluntary assumption to carry out an act prior to the onset of mental deficiency or disability see *Regina v. Abel* (1999) 134 C.C.C. (3rd) 155 (Alb. C.A.), *Regina v. McEachern*, [2003] A.J. N. 170 (O.B.), *Regina v. King*, (1962) 133 C.C.C. 1 (S.C.C.).

[56] If the accused's failures that evening were a voluntary decision, not to take the medication because it made him drowsy, it was incumbent on him not to drive.

[57] In either case whether the accident and deaths that resulted were either from a voluntary decision that brought about the driver's lack of appreciation and/or his disassociated state of the events that evening, which were present to be seen, or alternatively his failure to make observations which were plainly visible, in either case, he cannot avoid his responsibility.

[58] The accused's guilt lies therefore in his historical awareness, that because of his diagnosed condition, he could be a danger to the public while driving. This may well identify itself as too erratic behaviour prior to July 22, 2005 while operating a vehicle. At the time on July 22, he failed to take his medication, and knows or should know at this relevant time, he should not be operating his vehicle. It is this said causal connection his failure for whatever reason, to observe the events that evening, that results in the death of these two young women relating to the manner of his driving at the relevant time that brings us before this court. It is the combination of those factors, applying the modified objective test for which I am satisfied beyond a reasonable doubt, that a conviction must lie for the events that evening on the offence of dangerous driving (the dangerous operation of the motor vehicle at the relevant time). For the reasons

given, on this basis the accused is found guilty of each count 1 and 2 dangerous driving, and the charges as to count 3 and 4 criminal negligence, identified within the indictment are dismissed.

“Original Signed by Justice”

Anthony E. Cusinato
Justice

Oral Reasons Delivered: February 26, 2007