

**IN THE DISTRICT COURT
AT BLENHEIM**

**I TE KŌTI-Ā-ROHE
KI TE WAIHARA KEKE**

**CRI-2022-006-000549
[2024] NZDC 11140**

THE KING

v

KYLE JAMES CLARKE

Hearing: 6 May 2024 to 10 May 2024
Appearances: J M Webber for the Crown
A J D Bamford for the Defendant
Judgment: 17 May 2024

ORAL JUDGMENT OF JUDGE J E RIELLY

[1] On 13 March 2022 Allister Christie died following a crash on Vickerman Street, Blenheim. He was the driver and sole occupant of the vehicle he was driving, a silver SsangYong Chairman, that I am going to refer to during my judgment for ease of reference as “the SsangYong”. Defendant Kyle Clarke was the driver and sole occupant of another vehicle owned by Mr Christie, a blue Mercedes sedan, that I again am going to refer to as “the Mercedes” for ease of reference during my judgment.

[2] Mr Clarke stole Mr Christie’s Mercedes the preceding day. Mr Christie saw Mr Clarke driving his stolen motor vehicle when they met at a roundabout in the Blenheim township at lunchtime on Sunday, 13 March. Mr Christie drove recklessly on 13 March 2022. His manner of driving contributed to the cause of the crash that led to the loss of his life. The principal issue for the Court to determine on the lead

charges Mr Clarke faces is whether Mr Clarke also bears responsibility for causing Mr Christie's death that day because of his driving behaviour.

[3] Mr Clarke pleaded not guilty to the following charges:

- (a) Reckless driving causing death on 13 March 2022.
- (b) Dangerous driving causing death on 13 March 2022 (as an alternative charge).
- (c) Failing to stop and ascertain injury and render assistance on 13 March 2022.

[4] The charges relate to Mr Clarke's alleged conduct during and after the driving incident that led to Mr Christie's death.

[5] Mr Clarke pleaded guilty to related charges of burglary, unlawfully taking a motor vehicle and failing to stop for red and blue flashing lights related to his conduct the preceding day, 12 March 2022. Mr Clarke's trial proceeded in this court over five days between 6 and 10 May 2024.

[6] Mr Clarke has the presumption of innocence in respect of the charges to which he has pleaded not guilty. The Crown must prove the elements of the charges beyond reasonable doubt.

[7] I will first deal with the charges Mr Clarke faces related to his driving and the death of Mr Christie.

[8] For Mr Clarke's driving behaviour, the Crown prefers the charge of reckless driving causing death. To prove the charge of reckless driving causing death, the Crown must prove beyond reasonable doubt the following:

- (a) Mr Clarke was driving a motor vehicle;

- (b) Mr Clarke's driving fell below the standard of care and skill of a competent and reasonable driver, and he was responsible for that lapse;
- (c) Mr Clarke's driving created a situation which was objectively dangerous to other active or potential road users;
- (d) Mr Clarke appreciated the danger arising from his driving;
- (e) Despite appreciating that risk, Mr Clarke nevertheless carried on driving in that manner; and
- (f) Mr Clarke's driving was a substantial and operative cause of Mr Christie's death.

[9] If the Court is not satisfied that the Crown has proved beyond reasonable doubt that Mr Clarke is guilty of reckless driving causing death, the charge for consideration, in the alternative, is dangerous driving causing death. For that charge the Crown must prove beyond reasonable doubt four things. They include as follows:

- (a) Mr Clarke was driving a motor vehicle;
- (b) Mr Clarke's driving fell below the standard of care and skill of a competent and reasonable driver, and he was responsible for that lapse;
- (c) Mr Clarke's driving created a situation which was objectively dangerous to other actual or potential road users; and
- (d) Mr Clarke's driving was a substantial and operative cause of Mr Christie's death.

[10] In his opening statement at the start of the trial, Mr Bamford, on behalf of Mr Clarke, accepted that Mr Clarke's driving for approximately 17 kilometres prior to driving over the stop bank on Vickerman Street could be categorised as reckless. He said that Mr Clarke's reckless driving came to an end shortly before the crash and therefore Mr Clarke did not have a part in causing the crash or Mr Christie's death.

[11] In his closing address Mr Bamford revised his characterisation of Mr Clarke's driving faults. Mr Bamford acknowledged that Mr Clarke had been driving either recklessly or dangerously leading up to the crash, submitting that at the time Mr Clarke went over the stop bank on Vickerman Street he had ceased driving recklessly or dangerously and was carrying out a driving manoeuvre in an attempt to bring the pursuit between he and Mr Christie to an end. He said that the evidence supported that Mr Clarke had pulled off the road onto the gravel area, a positive driving manoeuvre in furtherance of his intention to bring the pursuit to an end, and therefore his driving, by that point, was not a material cause of the crash which led to Mr Christie's death.

[12] The defence say that Mr Christie's death was caused solely because and by his decision to take the law into his own hands by chasing Mr Clarke. The defence say that Mr Clarke was not a willing participant in a race or joint unlawful event, that Mr Christie's driving behaviour alone before the crash, was the cause of his death.

[13] Mr Bamford indicated at the end of the trial that the defence accepted that based on the medical evidence given by Dr Sage that it seemed a remote possibility that the cause of Mr Christie's death may have been because of a medical event rendering him unable to control the motor vehicle he was driving. Although not completely disavowing the possibility that the Court might consider that cause as possible, Mr Bamford conceded that it was, on the evidence, a remote possibility.

[14] The defence also note that there is evidence that supports that Mr Christie was not wearing a seatbelt at the time he was driving, a factor that cannot be attributable to the defendant, and that the failure to wear a seatbelt given the nature of the crash was likely a major factor in the injuries Mr Christie sustained.

[15] The principal consideration for the Court in respect of the reckless or dangerous driving causing death charges is whether Mr Clarke's reckless or dangerous driving had come to an end by Mr Clarke rationally and proactively disengaging from the driving pursuit, manoeuvring his car either towards, or to, a safe position on the gravel area off the roadway, therein resolving him of any legal responsibility for

causing Mr Christie's death. I will outline the legal position relevant to proof of causation later in my decision.

Background

[16] I now want to address some background matters relevant to determination of the charges Mr Clarke faces.

[17] Mr Clarke and Mr Christie were unknown to each other. At around 8 am on Saturday, 12 May 2022 Mr Clarke was in [street deleted], Blenheim. He entered the home of Heather and Allister Christie through a partially open side door that had been left ajar so that the dog could come and go from the house. Mrs Christie was upstairs in bed. Mr Christie was out.

[18] While in the Christies' home, Mr Clarke took various items, including an iPad, some sunglasses and a set of car keys for the Mercedes owned by the Christies and parked in their driveway that day. The Mercedes was parked behind the SsangYong that also belonged to the Christies.

[19] Mr Clarke used the car keys to take the Mercedes from the Christies' address. He drove away in it.

[20] At about 8.55 am on 12 March 2022 Mr Clarke was seen by police parked outside a house on Graham Street, Blenheim. A police officer recognised Mr Clarke by his general appearance and tattoos. Police attempted to stop Mr Clarke.

[21] Mr Clarke had been parked on a berm. He drove between a power pole and a fence to get past the police officer and drove onto the street. The following police patrol vehicle activated its red and blue lights and siren, signalling Mr Clarke to stop as he approached Maxwell Road.

[22] Mr Clarke drove away from the police vehicle at excessive speed heading south on Maxwell Road, speeding and overtaking other vehicles as he fled from police. Police abandoned the pursuit due to the police policy in place at the time related to pursuing speeding vehicles.

[23] Mr Clarke was not found that day.

[24] Later that day Mr Christie was advised of this incident when he reported his Mercedes stolen. He expressed frustration at the police pursuit policy.

[25] At approximately 1 pm on Sunday, 13 March 2022 Mr Clarke was driving the Christies' Mercedes north towards the Grove Road/Main Street/State Highway 1 roundabout in Blenheim. As he entered the roundabout he noticed a silver motor vehicle to his right entering the roundabout from the east on Main Street. Mr Clarke recognised the vehicle as the one that had been parked in front of the Mercedes he took the day before, one and the same vehicle that he was at the present time driving.

[26] Mr Christie, who was driving his SsangYong, recognised his Mercedes and started following Mr Clarke.

[27] Mr Clarke, although he had never met Mr Christie, quickly inferred that Mr Christie was following him because he was the owner of the Mercedes Mr Clarke was driving. Mr Clarke said a number of things in his interview with Detective Sergeant, then [Detective A], three days after the crash, on 16 March 2022, relevant to Mr Clarke's knowledge that the driver of the vehicle he was engaged in a driving pursuit with was the person who owned the stolen car he was driving.

[28] Not necessarily in order, Mr Clarke said the following things during the interview with police. I am not going to use in my decision the swear words he used; rather I will use an initial for any swear word.

- (a) Mr Clarke said that he first became aware that the owner of the vehicle was following him when he'd taken two turns [after the initial meeting of the vehicles at the roundabout].
- (b) He said that he thought "F, this guy is the owner", remembering the silver "merc" in the driveway, because he had liked that vehicle more than the blue Mercedes he had stolen, and that he thought "I've got to get away from him".

- (c) He thought that he, meaning Mr Christie, was “obviously” not stopping.
- (d) Mr Clarke said that he had no right to steal the car, but that he didn’t tell him to chase “me”, he didn’t tell him to do any of it.
- (e) He said that at the end of the day he was trying to get away from him, meaning Mr Christie, so that they weren’t in each other’s faces.
- (f) Mr Clarke said that he knew that the owner was after him and that he needed to get away from him and that’s what he tried to do.
- (g) He said that the person we now know to be Mr Christie kept “raunching” up his “arse”.
- (h) He said that he didn’t want to be caught in his, meaning Mr Christie’s, car, so he gunned it and went out to Grovetown and that’s when it all happened.
- (i) He said that he knew he had no right to the car and that he didn’t give an “F” about the car.
- (j) He said that he didn’t think about anyone else but himself at the time, and keeping himself safe.

[29] Mr Clarke did not want to be caught in the stolen Mercedes, so he accelerated away from Mr Christie at speed. A high-speed chase ensued with Mr Christie following Mr Clarke. The two vehicles travelled for around 17 kilometres. At all times Mr Christie was following Mr Clarke. Mr Clarke set the pace of the motor vehicles. Mr Clarke drove along Grove Road, turning left onto Auckland Street and then accelerated heavily towards Hutcheson Street. Mr Clarke turned right and went north along Hutcheson Street through the roundabout. These streets are designated as 50 kilometre per hour driving zones.

[30] Mr Clarke turned hard right into Pitchill Street and ended up getting back onto Hutcheson Street. Mr Clarke drove at speed along Hutcheson Street and then turned right onto Lansdowne Road and drove up to State Highway 1 via Grove Road where he turned hard left onto State Highway 1. He drove over the bridge on State Highway 1 at speeds approaching 130 kilometres per hour while passing two vehicles at once.

[31] Mr Clarke's speed exceeded the 100 kilometre per hour speed limit while he was driving on State Highway 1, which is the carriageway for all traffic, including a significant volume of heavy traffic travelling to and from the Picton ferry.

[32] Mr Clarke continued at speed for 2.5 kilometres towards Fell Street.

[33] Without using the turning bay in place for use by right turning traffic from State Highway 1 into Fell Street, Mr Clarke suddenly swerved right, cutting the corner onto Fell Street into the oncoming lane and over the train tracks at speed. [Witness 1] saw the manoeuvre and said in his evidence that if a car had been travelling towards that intersection, or had been at that intersection on Fell Street, Mr Clarke would have hit it. The site visit revealed that the camber of the road was not conducive to a high-speed turn and that a turning vehicle could not have had a clear line of sight into the Fell Street roadway. Mr Clarke and other road users were extremely fortunate that there were no other vehicles at or near that intersection on Fell Street when Mr Clarke turned into it or he would have inevitably collided with them while travelling at speed.

[34] Mr Christie drove up the turning bay lane and paused at the turning bay waiting for oncoming traffic before turning right into Fell Street to continue his pursuit of Mr Clarke. Mr Christie waited for [witness 1] to pass him as [witness 1] travelled in the opposition direction heading south on State Highway 1. [Witness 1] observed Mr Christie from the cab of his Ford Ranger motor vehicle. In the fleeting moments that he drove past the person we now know must have been Mr Christie when he was stationary in the turning bay waiting to turn right into Fell Street, [witness 1] noticed that the driver appeared agitated or amped up, like he did not want to have to give way to [witness 1]'s vehicle. [Witness 1] thought that it might have something to do with the vehicle he had just seen turn into Fell Street at speed.

[35] Fell Street has a 50 kilometre per hour speed limit. Mr Clarke drove at speed along Fell Street. He overtook a vehicle travelling at an excessive speed. [Witness 2] said in his statement to police that it seemed like the vehicle appeared out of nowhere. Mr Clarke also passed pedestrians near the road. He talked about seeing them during his interview with police. Mr Clarke continued towards the Vickerman Street/Fell Street intersection. Mr Clarke did not pull back into his lane. [witness 2] described the driver, who we know now was Mr Clarke, turning blindly at speed into Vickerman Street without appearing to look for oncoming traffic or cyclists.

[36] Mr Clarke drove into the path of another motorist travelling south on Vickerman Street, Ms Hale. Ms Hale gave evidence. She said that as she travelled south on Vickerman Street a car came flying out in front of her, did a big drift and then straightened before heading past the school that was on the corner. She described slamming on her brakes to avoid a collision and coming to a stop.

[37] Mr Christie, following Mr Clarke, also went onto the wrong side of the road on Fell Street to get past the vehicle likely to be [witness 2]'s. He waited at the intersection looking at the now stationary vehicle of Ms Hale's, who had stopped to allow Mr Clarke entry into the intersection, and signalled to her that she should continue. She observed that he looked quite upset, quite angry. She also described him being hunched over the steering wheel.

[38] Mr Christie waited for Ms Hale to go. She accelerated and continued along Vickerman Street. Mr Christie also turned right into Vickerman Street following Ms Hale. He honked on his horn and pulled up close behind her. About 200 metres from the intersection Ms Hale pulled over and allowed Mr Christie to go past.

[39] Ms Hale observed Mr Christie accelerating and driving quickly south on Vickerman Street. She said in evidence that it was clear to her at this point that the second driver, who we know was Mr Christie, who she described as the guy, was chasing the first.

[40] Mr Clarke in his interview with police described Mr Christie following his vehicle as it travelled south on Vickerman Street as him "pelting it", "going hundy",

“gunning it” and doing about 200 and something k’s, meaning 200 and something kilometres per hour. Mr Clarke said he was driving at up to 160 kilometres per hour and that Mr Christie was gaining on him.

[41] Senior Constable Burbery measured the distances from Fell Street to the hump in the road on Vickerman Street which was the point that Mr Christie’s vehicle began to lose control. It measured 2.79 kilometres.

[42] What happened next is the subject of factual dispute pivotal to issues in the proceeding.

Crown theory of the case

[43] The Crown’s theory of the case is as follows.

[44] Mr Christie’s driving was poor and his own driving conduct contributed to the cause of the crash which led to his death. There is no dispute that Mr Christie was chasing Mr Clarke and that both engaged in dangerous and reckless driving but, in respect of Mr Clarke, Mr Webber summarised the Crown position as follows.

[45] The events that unfolded between Mr Clarke and Mr Christie on 13 March 2022 need to be looked at in the round because of decisions Mr Clarke made in furtherance of his desire to get away from Mr Christie, including a highly dangerous driving manoeuvre. Mr Webber said that it is important to note that Mr Clarke could have stopped at any time.

[46] Mr Webber said that Mr Christie’s poor driving does not exonerate Mr Clarke unless his driving was the sole cause of the crash, which the Crown says in the context of this case, it could not be. Mr Christie’s driving did not happen in a vacuum, in that it takes two vehicles to be involved in a car chase. The Crown says that without Mr Clarke driving at high speed in an attempt to escape and avoid potential apprehension for the theft of Mr Christie’s car, there would have been nobody for Mr Christie to chase. Further, that when the Court considers that Mr Clarke determined the route and made the chase a high speed one, he significantly contributed

to the events. The Crown says that Mr Clarke did not need to drive at high speeds to avoid a risk of being rammed by Mr Christie in circumstances where Mr Christie was trying to recover his vehicle, and Mr Clarke has not at any stage suggested that he thought that Mr Christie might ram him.

[47] The Crown submits that without Mr Clarke's fleeing conduct the entire car chase would never have happened, neither vehicle would ever have gone over the stop bank on Vickerman Street, meaning that Mr Christie would still be alive.

[48] The Crown submits that all of Mr Clarke's driving behaviour on 13 March 2022 and the whole sequence of events leading up to Mr Christie's death is relevant and that his driving was a material and proximate cause of Mr Christie's death, whatever the instant cause of the collision was and wherever Mr Clarke had positioned the Mercedes on the road shortly before it was struck by the SsangYong Mr Christie was driving.

Crash analysis – expert evidence

[49] I am now going to refer to the expert evidence about crash analysis.

[50] During the trial there was a significant focus on the initial crash investigation and analysis of the crash. This was entirely understandable and appropriate given that the principal issue in this case is causation, and that linked with that, the evidence supporting or countering Mr Clarke's version of events, that he had consciously and deliberately withdrawn from the pursuit and was stationary off the roadway in a safe position at the time the crash occurred.

[51] Senior Constable Burbery, police serious crash unit investigator, gave evidence for the Crown. Dr Stevenson, mechanical engineer, gave evidence for the defence. Each had prepared detailed crash analysis reports that included photographs and diagrams prior to trial and supplementary reports responding to the opinions expressed by each other. Both experts were extensively cross-examined about their findings, analysis, theories and opinions.

[52] Although there was a significant focus on this evidence during the trial, I do not intend to summarise all of their evidence or provide a detailed analysis as counsel did in their questioning of the witnesses during the trial. The parts of the evidence relevant to my reasoning and decision will be referred to.

Senior Constable Burbery

[53] Senior Constable Burbery is an experienced police officer in traffic crash investigation. Given his qualifications and experience he is appropriately categorised as an expert in traffic crash investigation. He attended the scene the morning after the crash and carried out a police traffic crash investigation. He examined the scene, marked the scene, directed a police photographer to photograph the scene, plotted items of interest, measured and surveyed the scene, oversaw retrieval of the vehicles from the culvert, and gathered physical evidence to assist him in his continuing crash investigation.

[54] Later Senior Constable Burbery closely analysed the vehicles while they were in secure storage, matching physical evidence taken from the scene with the vehicles where that was possible and organised for further photographs to be taken.

[55] Having regard to the evidence gathered during his investigation and other evidence including witness accounts, the interview with the defendant and the vehicle inspection reports of Mr Clay, who was the vehicle inspector, Senior Constable Burbery prepared a thorough traffic crash expert opinion report about the circumstances of the crash.

[56] After receiving the expert opinion report of defence expert, Dr Stevenson, Senior Constable Burbery reviewed Dr Stevenson's statistics and opinion in regard to area of impact and degree of separation between the vehicles and prepared an additional report and diagram depicting an alternative slightly varied likely impact position between the vehicles at the scene, indicating during his evidence that he preferred his second alternative as it was supported by other evidence found at the crash site.

[57] Senior Constable Burbery considered the nature of the roadway, the scratch markings on the road, tyre marks on the road and in the gravel area on the northern side of the road near the entry point of the vehicles to the culvert, the various types and placement of debris in various places in the vicinity of the crash, the absence of vehicle fluids on the road and beside the road, and the positioning of the vehicles as they came to rest.

[58] In his opinion the SsangYong vehicle driven by Mr Christie was likely to be travelling at around 122 kilometres per hour over the crest of the rise of the hump in Vickerman Street at the stop bank with the vehicle vaulting and contacting the road front first approximately 23.3 metres past the rise. The vehicle's contact with the road scratched the road. The SsangYong driver, Mr Christie, lost control of the vehicle due to the hard landing at high speed, with the vehicle veering out of control to the right, travelling from the southbound lane across the road towards the northbound lane making contact with the rear of the Mercedes driven by Mr Clarke in the middle of the northbound lane on Vickerman Street, shunting the Mercedes forward with the vehicles then likely moving together, on a forward trajectory, both vehicles travelling across a very short distance off the roadway and into the culvert, each vehicle making contact with the southbound side of the culvert before coming to rest in the culvert.

[59] That is a summary of Senior Constable Burbery's opinion.

Dr Stevenson

[60] Dr Stevenson has a doctorate in mechanical engineering. He has been conducting crash reconstruction and analysis for crashes, varied in nature, for 24 years. The Court recognises that Dr Stevenson is an expert in the field of crash analysis and reconstruction. He almost exclusively carries out his analysis based on the evidence gathered by police and/or other investigators who have visited the scenes of the crashes shortly after they occur, the investigator's analysis, and then conducts later site visits and reconstructions. That was the way he carried out his analysis in this case.

[61] Dr Stevenson reported that he was instructed by the defence to provide an interpretation of the evidence relating to the collision between the SsangYong and

Mercedes motor vehicles. Dr Stevenson carried out an analysis of the police evidence including the crash investigation carried out by Senior Constable Burberry. He did a site visit and carried out simulations using specialised computer software and came to his own opinions about where the two vehicles impacted with each other and the cause of the crash.

[62] It is clear that Dr Stevenson was focussed on the position of the Mercedes Mr Clarke was driving at the point of impact between the vehicles, and in particular whether the Mercedes was off the roadway and stationary, in circumstances where that was Mr Clarke's version of events to police.

[63] Dr Stevenson considered his qualifications, experience and ability to rely on software not available to Senior Constable Burberry enhanced his ability to map and reconstruct the scene, making his opinion about the likely point of impact between the vehicles and the cause of the crash more reliable than that of Senior Constable Burberry.

[64] Dr Stevenson did not have the benefit of visiting the scene shortly after the crash. The Court does not accept Dr Stevenson's evidence that reliance on quality photographs of the scene is a more reliable, or equally reliable way, to assess physical evidence at the scene of a traffic crash.

[65] Dr Stevenson disregarded much of the evidence relied upon by Senior Constable Burberry in coming to his expert opinion, particularly in regard to the point or area of impact between the two vehicles, on the basis that it was unreliable for a variety of reasons. He considered that due to the delay between when the crash occurred and the road being closed that there was likely to have been significant travelling, relocation or redistribution of the debris left by the vehicles at the scene such as to make it unreliable for use in plotting the point of impact.

[66] He expressed concern about the absence of vehicle fluids at the point of impact identified by Senior Constable Burberry, as had Senior Constable Burberry himself. He had noted that this was unusual. There was also an absence of vehicle fluids at the place Dr Stevenson opined was the point of impact.

[67] Dr Stevenson considered that the only reliable evidence at the scene was the tyre marks in the gravel off to the side of the northbound lane of Vickerman Street, and perhaps also the scratch marks on the road. His evidence was that those tyre marks indicated where the point of impact was between the vehicles. He said that the start of the tyre marks could have been made by the front or the rear axle tyres of the Mercedes, which had the Mercedes vehicle either completely off the roadway on the gravel area, or on the gravel area beside the road at the point of impact with its tail in the northern lane.

[68] Dr Stevenson said that the tyre marks supported that the Mercedes vehicle was stationary at the point of impact.

[69] Under cross-examination Dr Stevenson acknowledged that the detailed computer or software generated scenario testing he had completed relied on the data he had inputted and that it may not be reliable. It became clear during his evidence that the angle he positioned the Mercedes vehicle at, parallel to the roadway, may have influenced the scenario outcomes and that the angle may well have been inconsistent with the other evidence of the skewed angle the Mercedes was positioned in relation to the road, including the direction of travel of the tyre marks Dr Stevenson placed significant reliance on.

[70] There were areas of agreement between the opinions of the experts, including:

- (a) The likely speed of the SsangYong being driven by Mr Christie as it went over the rise of the stop bank on Vickerman Street, being 120 to 122 kilometres per hour.
- (b) That the Mercedes had been deliberately moved (driven) to the right following negotiating the hump in the road.
- (c) Features of the roadway.

[71] Senior Constable Burberry acknowledged that some of the debris could have travelled or relocated within the scene after the crash, prior to it being secured by

police, but gave a very plausible account and demonstration of the unlikelihood of the debris travelling in the way, or to the extent, that Dr Stevenson suggested to the Court it may have travelled.

[72] Senior Constable Burberry's evidence about the placement of the debris, including in the area north of the area where he opined the vehicles impacted aligned with other evidence in the case, including the scratches on the roadway, significant items of vehicle debris, including distinctive items of debris later able to be matched with each of the vehicles, and the tyre marks on the road as well as the tyre marks off the road in the gravel area. These were found in areas they would be expected to be found having regard to other evidence, including Mr Clarke's own account in his statement of how and where he saw the SsangYong become airborne before landing on its "nose" prior to going what he described as "straight into him".

[73] The absence of oil and other vehicle fluids in the scene was clearly puzzling to both traffic crash experts given the nature of the crash. Both expected oil and fluids to be present in places they were not. This was, in the end, on my assessment, no more than an absence of evidence to support each expert's opinion about the area of impact.

[74] Although there was extensive evidence offered from each witness about the reasons for their opinion about point or area of impact of the vehicles, even on their own evidence the difference was a distance of no more than 18 metres.

[75] Both experts described that the SsangYong would have been travelling in the air after becoming airborne and then impacting with the rear of the Mercedes for a period of less than two seconds.

[76] Senior Constable Burberry considered it more likely that the Mercedes was moving when it was struck by the SsangYong because of an absence of scuff marks caused by momentary interaction between the stationary tyres and the roadway but conceded that it could not be definitively ascertained with the information available if the Mercedes was moving or stationary at the time of impact. Dr Stevenson, too, acknowledged in evidence that he could not be definitive about whether the two scuff marks were made by a stationary vehicle being hit or a moving vehicle being hit.

[77] Senior Constable Burberry's opinion about where and how the crash occurred is supported by a thorough analysis of all of the evidence, acknowledging that some of the evidence was more reliable than other evidence, depending on what it was and how it fit with the other evidence. Dr Stevenson's setting aside of a significant amount of the physical evidence because of concerns about its reliability for a variety of reasons was difficult to reconcile with his reliance on simulations, which to be reliable needed inputting of as much data as possible. Dr Stevenson conceded in evidence that the Court needed to be careful about the weight to be attached to his computer simulations.

[78] Senior Constable Burberry had the benefit of visiting the scene and dealing with all of the physical evidence, including the crashed vehicles after recovery. The integrity of his analysis of the crash scene did not come under scrutiny by the defence expert. He explained in a thorough way how the physical evidence did and did not fit with his analysis and how he calculated time, distance and impact zones both on and between the vehicles, with the roadway, the gravel area off the roadway and the culvert. Senior Constable Burberry's diagrams gave a helpful pictorial explanation of important physical evidence at the scene that assisted him, together with his analysis of the vehicles involved in the crash, in support of his opinion about how the crash occurred and the point and area of impact between the vehicles.

[79] The Court considers that based on the expert evidence of Senior Constable Burberry, that the likely point or area of impact of the two vehicles was on the area of the roadway he opines they came into contact with the front of the SsangYong, that had been travelling at a significant speed, that had already nosedived into the roadway causing it to become airborne, moving with speed and significant force across the roadway from the southbound lane into the northbound lane out of control, and striking the rear of the probably slowing Mercedes in the northbound lane, causing the two vehicles to connect and move together with great force and speed towards the culvert.

[80] But for his vague description in his interview that he was already off the road, which may not have been accurate, this vehicle movement is consistent with Mr Clarke's version of events.

[81] Having visited the scene during the trial, it cannot be ignored how narrow this roadway was, how small the gravel area was and how close the culvert was to both the gravel area and the roadway.

[82] Neither expert can explain how the SsangYong ended up in front of the Mercedes, at a different angle, in the culvert. That fact does not affect that both vehicles ended up in the culvert after impacting.

[83] In the end, exactly where on this narrow roadway Mr Clarke had moved to prior to the SsangYong connecting with the rear of the Mercedes and whether he was momentarily stationary is not determinative to the issue of whether at the time of the crash his driving was reckless or dangerous, or that he had a part in causing Mr Christie's death.

Cause of death – Dr Sage's evidence

[84] Dr Sage was the pathologist who carried out the post-mortem on Mr Christie. He is an experienced forensic pathologist. I am now going to refer to his evidence about the medical cause of Mr Christie's death.

[85] Dr Sage gave evidence that he had undertaken more than 10,000 autopsies in his 40 years as a forensic pathologist, including examining more than 2,000 fatal road crash victims, many other deaths following immersion in water and deaths from valvular heart disease. He gave evidence about Mr Christie's injuries. In his opinion, in circumstances where Mr Christie had been submerged in water after suffering crash injuries, including chest injuries and an undisplaced upper thoracic spine fracture, and that those injuries may have impaired Mr Christie's ability to get out of the vehicle once he was in water, the cause of death was likely caused by injuries sustained in a high impact motor vehicle crash and/or immersion in water.

[86] Although Mr Christie was found to have a previously undiagnosed heart condition of calcific aortic valve stenosis, it was in Dr Sage's opinion no more than a remote possibility that his heart disease contributed to the crash. He said that in this

pattern of heart disease there is no published evidence to show that there is a connection between the concept of fight, flight, frolic and sudden unexpected death.

[87] Dr Sage's evidence needs to be considered having regard to all of the evidence available about the events leading up to Mr Christie's death. The only plausible inference to be drawn by the Court is that Mr Christie's death was caused by immersion in water and/or injuries sustained in a high impact, high speed motor vehicle crash.

The law on causation

[88] I am now going to refer to the law relevant to assessing Mr Clarke's role in the crash.

[89] Crown counsel provided a helpful summary of the law that has developed in respect of causation in the context of reckless or dangerous driving causing death. Defence counsel also referred to the principles espoused in these cases. The Court adopts a number of those principles to assist in explaining the reasons for the Court's decision in respect of Mr Clarke's culpability.

[90] A person's death may have a number of causes in any particular case. A death may be attributed to a person's conduct, even though that conduct was not the sole cause of death. It is sufficient if, at the time of death, the conduct was "a substantial and operative cause". The Courts have also used the term "sufficiently proximate and material cause".

[91] A contributing cause may be a substantial and operative cause, even though it is not the main cause. There is no requirement that a person's conduct was the substantial and operative cause of death. It does not matter that other conduct, by the same person, or another person or persons, was also a contributing cause. Nor does it matter that the victim's own negligence contributed to the cause of their death.

[92] In the case of *Lewis v Police* the appellant had been driving at an excessive and dangerous speed and hit another vehicle which had emerged from an intersection

controlled by a stop sign.¹ He argued that his dangerous driving had not been shown to be the substantial or real and effective cause of the death, and that the other driver moving across the State Highway from a side road controlled by a compulsory stop sign made that driver responsible and his actions the cause of the death. The High Court Judge referred to the authorities available at that time and held the following:

The true position is that in the charge which the appellant faced it is not necessary to show that his dangerous driving was the cause or the substantial or effective cause. It is enough to show that it is a cause of the accident or in this case death arising from the accident and the fact that the driver of the deceased's car may have also been negligent or in breach of his statutory obligations does not avail the appellant unless that is shown to be the sole or effective cause of the accident.

[93] In *Hurst v Police* the appellant had been involved in a high-speed chase with another car.² He was the chasing vehicle, having decided to pursue the other vehicle because of conflict with a person in that vehicle. The chased vehicle executed a turning manoeuvre which resulted in it veering in front of Mr Hurst so that he shunted it. The driver of that vehicle was killed and others were injured. Mr Hurst argued that the prosecution could not prove recklessness, and that if the driving was reckless the prosecution had not proved that it caused the death. In the District Court it was argued that the deceased's driving was every bit as bad as the defendant's and that there was evidence to suggest that the cause of the collision, and thus the death and injury, was the fact of the deceased's vehicle cutting across to the left-hand lane in front of the appellant's vehicle.

[94] On appeal the High Court agreed that objectively the deceased's driving may have been every bit as bad as Mr Hurst's. Assuming the evidence of the deceased's vehicle causing the collision by cutting across the appellant's to be correct, it was still the appellant's reckless pursuit of the deceased's car which caused the deceased to act as he did. Therefore, the appellant's driving was a sufficiently proximate and material cause of the collision to link it directly with the ensuing death and injuries of those in the other vehicle. Citing the decision of *Lewis*, the Court held that it need not have been the only or even the principal cause.

¹ *Lewis v Police* (1980) 1 CRNZ 659.

² *Hurst v Police* (1990) 5 CRNZ 506.

[95] The District Court decision of *R v Reid* is authority for the position that conduct that amounts to a contributing cause may not necessarily have included any direct involvement in the crash that led to the death.³ In *Reid* the defendant had engaged in an impromptu race with another driver who was unknown to him after they found themselves side by side at traffic lights in Christchurch. The other driver lost control, crossed the centre line, crashed into another car and was killed. People in the car she hit were badly injured. The defendant was not involved in that crash. He and the woman he had been racing had ended the race as he had pulled out of it prior to the crash. He argued that the Crown could not establish causation.

[96] The Court dismissed the application for discharge, citing *Lewis, Hurst* and a case called *Uren*, finding that the prohibited conduct of the defendant must have been a sufficiently proximate and material consequence of the alleged consequence, and that it is no defence to a charge of this general nature that another person may have been negligent or in breach of his or her own statutory obligations.⁴ The Court held that the fact that the deceased may have also driven recklessly or dangerously or, more pertinently, may have engaged in a race with the defendant, would not exonerate the defendant if his involvement in that race was a substantial and operative cause of the collision between the deceased's car and the other vehicle. That case is not binding on this Court, but the reasoning is sound and the facts analogous to the instant case.

[97] Defence counsel provided the Court with the recent case of *Brunt v R*.⁵ Ms Brunt had been convicted in the District Court of a less serious charge than Mr Clarke faces of careless driving causing death. She appealed her conviction to the High Court. Although much of the Court's judgment was dealing with the legal test related to matters pertaining to careless driving, the Court did make the following salient point:

Responding to a situation of emerging risk in a prudent way may be even more important precisely because of the possible danger when others are driving in breach of the requirements.

And further:

³ *R v Reid* DC Christchurch CRI-2004-009-003642, 4 March 2005.

⁴ *Lewis v Police* above n 1; *Hurst v Police* above n 2; and *Uren v Police* (1993) 10 CRNZ 141.

⁵ *Brunt v R* [2023] NZHC 451.

No matter what she [the appellant] was thinking the circumstances revealed by the evidence demonstrated a lack of prudence in her reaction notwithstanding that the situation was not initially of her making.

[98] I note that the defence refer to the case of *Chand v Police* where the High Court dealt with an appeal against conviction on two charges of dangerous driving causing injury in a street racing case.⁶ The High Court quashed the convictions on the ground that the conduct of the other driver was not a risk that the appellant should reasonably have foreseen.

Decision – Reckless driving causing death

[99] I now turn to my decision in respect of the charges of reckless driving causing death, or dangerous driving causing death in the alternative.

[100] Mr Clarke saw the face of the man in the SsangYong, a car he recognised, at the roundabout where they first met on 13 March 2022. It would have been obvious to Mr Clarke that the driver, Mr Christie, was an older man. Mr Clarke set the pace and chose the path of travel in circumstances where he was a local, he was thoroughly familiar with the Blenheim area, he had associates and he could have stopped anywhere he chose and left on foot. He would have been highly likely to be successful in getting away from Mr Christie, albeit likely without the Mercedes. Instead, Mr Clarke opted for a more dangerous and reckless method of getting away, becoming the lead car in a pursuit. Sadly, Mr Christie, in his likely state of frustration and anguish, chose to pursue Mr Clarke. The pursuit ended with tragic consequences.

[101] Mr Clarke knowingly engaged in significantly dangerous driving manoeuvres for a distance of kilometres over a period of many minutes. What he said to police three days later about his driving manoeuvres and the reasons for them, that it was to get away from Mr Christie who owned the stolen car he was driving, is evidence that is relevant to the Court's assessment of whether Mr Clarke's driving created a situation which was objectively dangerous to other active or potential road users, his appreciation of that danger, and his decision to nevertheless carry on driving in that manner.

⁶ *Chand v Police* [2005] DCR 762.

[102] On the evidence of [witness 1], [witness 2] and Ms Hale, there is an abundance of evidence that Mr Clarke, in a variety of ways, carried out extremely dangerous driving manoeuvres at speed, placing other road users and people in the vicinity of the roadway, at significant risk of harm.

[103] Mr Clarke must have appreciated that risk. His remarks to [Detective Sergeant A] three days after the crash are consistent with him appreciating that risk, not only to motorists, but also to members of the public he saw beside the roadway, and yet he carried on driving at speed in a dangerous manner. Therefore, the Court is satisfied, that Mr Clarke was driving recklessly up until he approached the stop bank as he travelled south on Vickerman Street with Mr Christie pursuing him.

[104] The evidence is not entirely clear, having particular regard to Mr Clarke's remarks to [Detective Sergeant A] during his interview, about his approach to the stop bank and intentions once he got over the stop bank, or on any independent evidence, of which there is little, whether Mr Clarke formed the intent to engage in a driving manoeuvre at high speed using the stop bank as cover to facilitate escape from Mr Christie who was pursuing him shortly before he went over the stop bank, or whether he formed that plan at some earlier stage during the pursuit. Despite that, it is clear that Mr Clarke was very familiar with this roadway, in particular the stop bank.

[105] The evidence supports that Mr Clarke had slowed to get over the stop bank at a speed that meant he could retain control of the vehicle in circumstances where he knew that Mr Christie was advancing on him at a greater speed. Mr Clarke's deliberate actions in continuing to drive at speed with the knowledge that Mr Christie was pursuing him at speed on a roadway that had hazards known to Mr Clarke made all of his driving risky. Mr Clarke had commenced the manoeuvre away from the southbound lane only split seconds or seconds prior to the crash. It was not a safe driving manoeuvre as Mr Clarke claims. Equally, it ignored the risk to himself and other road users, most particularly Mr Christie. It would be perverse to contextualise Mr Clarke's driving conduct in the split seconds or seconds prior to the crash as discrete from his earlier driving conduct during the pursuit with Mr Christie. Mr Clarke's involvement in the driving remained operative immediately prior to the crash. The Court cannot consider Mr Clarke's driving behaviour in a vacuum. There

were a myriad of risks that Mr Clarke should have and inevitably did foresee, but chose to ignore due to his determination to get away.

[106] Accordingly, all of Mr Clarke's driving in the pursuit with Mr Christie right up until the point of the crash needs to be taken into account in regard to consideration as to whether Mr Clarke and his driving conduct was a substantial and operative cause of Mr Christie's death. Clearly, on the evidence, his conduct was, and accordingly I find Mr Clarke guilty of reckless driving causing the death of Mr Christie.

Decision - Failing to ascertain injury and render assistance

[107] I now turn to the charge of failing to ascertain injury and render assistance.

[108] Our law provides that if an accident arising directly or indirectly from the operation of a vehicle occurs to a person or to a vehicle, the driver must:

- (a) stop and ascertain whether a person has been injured; and
- (b) render all practicable assistance to any injured person(s).

[109] To prove the charge of failing to stop and ascertain injury or render assistance, the Crown must prove the following things:

- (a) Mr Clarke was the driver of a vehicle involved in an accident.
- (b) A person, in this case Mr Christie, was killed in the accident.
- (c) After the accident, Mr Clarke failed to stop and ascertain whether any person, in this case Mr Christie, had been injured and/or failed to render assistance to any person, Mr Christie, involved in the accident.
- (d) Mr Clarke did not have a reasonable excuse for failing to ascertain injury and/or failing to render assistance to another person, Mr Christie, after the accident.

[110] In respect of this charge the defence submits that Mr Clarke had a reasonable excuse for not ascertaining if Mr Christie was injured and for not rendering assistance to or for Mr Christie. The defence submit that Mr Clarke was in shock after the crash, that he had sustained injuries himself and that he was suffering from significant effects and symptoms arising from his own injuries. The defence urges the Court to take into account the circumstances Mr Clarke found himself in in the period immediately following the crash.

[111] There is no dispute that Mr Clarke was the driver of a vehicle involved in an accident, that a person, Mr Christie, was killed in the accident, and that after the accident Mr Clarke failed to stop and ascertain whether the person in the other car involved in the crash, Mr Christie, had been injured. Further, there is no dispute that Mr Clarke failed to render any assistance to the driver of the other car, Mr Christie. The sole issue is whether Mr Clarke had a reasonable excuse for failing to ascertain injuries to the driver of the other car involved in the accident he was involved in and for failing to render assistance to that person after the accident.

[112] The Court accepts that Mr Clarke would have suffered a significant shock and fright being involved in this crash. The crash was a significant one. After a high-speed pursuit Mr Clarke had been shunted by a vehicle from the rear at significant speed and with significant force, causing his vehicle to become airborne striking a concrete culvert before the vehicle came to rest in the culvert submerged in water. Mr Clarke described waking from a state of unconsciousness realising the situation he was in, in a crashed vehicle submerged in water. He successfully scrambled to get himself out of the vehicle. Mr Clarke had sustained a bump to the head and other, likely less significant, injuries. The forehead injury was still obvious when he was interviewed by police three days later and he described other symptoms of blood running down his face and knees and sprained feet that at the time he thought might be broken. He described being sore and there was a reference to him vomiting following the crash.

[113] Mr Clarke described what occurred as the “most scariest” thing that has ever happened to him. When asked during his interview with police on 16 March 2022 whether he saw the other car when he got out of the water, he said that he did not, that he did not even look, that he just got the “F” out of there. He said that all he was

worried about was that he thought he was dying and that he walked along the river and across rural land for what must have been quite some distance going to two associates' addresses. He had a shower. A friend helped him wrap his arms, then he left. He described the initial walk as a ten-minute walk in a rural area to get help.

[114] Mr Clarke said he knew that he had just been in an accident. He said that he needed to do just one thing to keep himself safe, so he did not die. That is against a backdrop that he knew what had happened, and he clearly knew that there were two vehicles involved in the crash. Saliiently, he also knew that someone else had been driving the other vehicle and was likely in the culvert in the water.

[115] The fact that Mr Clarke had been involved in the crash is not in and of itself a reasonable excuse for failing to ascertain injury and/or render assistance to another person involved in the accident. The purpose of this legislative provision is to ensure that any person involved in an injury crash, as long as they are capable of doing so, fulfils their legal obligation to ascertain injury of any other person involved in the crash and, if needed, to render them assistance.

[116] It is clearly possible, given the evidence offered at trial about the nature of the crash and Mr Christie's injuries, that Mr Christie may have already died either during the crash or prior to Mr Clarke or anyone else being able to get to him to check on him and render him assistance. However, that is not the point of the legislative provision.

[117] Mr Clarke must have known the peril that the driver of the other car involved in the crash was likely to be in given the situation he himself had found himself in, in a vehicle submerged in water, with injuries, following a high-impact crash.

[118] It is clear from Mr Clarke's actions and movements immediately following the crash that he was physically capable of at least looking for the other vehicle and its driver, of attempting to ascertain whether that person was injured, or worse, and of course attempting to render assistance, either physical assistance himself, or by seeking out assistance of other members of the community.

[119] Mr Clarke, prioritising his own self-interest of getting away from the scene of the accident undetected, left the area following a path that would be least likely for him to be detected. He was successful in that regard.

[120] Where the vehicles landed in the culvert was right beside a public road. Mr Clarke could have headed in the direction of civilisation in one of two directions on Vickerman Street, an area he knew well, waved down a passing motorist, visited one of the nearby homes to seek assistance, or at the very least to sound an alarm that another person had been involved in a significant crash that he was involved in. He did not do any of those things.

[121] In the minutes, hours and days that followed, Mr Clarke did not contact authorities, even anonymously or through a third party that he might have confided in, to advise them that there had been a crash involving two vehicles and that one person was unaccounted for and potentially in a culvert full of water.

[122] None of Mr Clarke's injuries or symptoms from his injuries made him incapable of either ascertaining whether the other driver was injured or at least attempting to render assistance in one way or another for Mr Christie. His emotional state was elevated, but that is not a reasonable excuse for failing to have ascertained if the driver of the other vehicle was injured, or to have rendered assistance to him, or at least tried to do so. Even three days later during a police interview, although expressing upset that a man had died following the crash, Mr Clarke remained engrossed in justifying that his focus was and should be solely on himself, and that his actions had been in furtherance of "getting away".

[123] Having found that Mr Clarke did not have a reasonable excuse for failing to ascertain whether Mr Christie was injured, or of rendering him some kind of assistance, I also find Mr Clarke guilty of this charge.

Judge JE Rielly

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 24/05/2024