



Case in Brief: **R. v. Chung**

Judgment of March 27, 2020 | On appeal from the Court of Appeal for British Columbia  
Neutral citation: 2020 SCC 8

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***Excessive speeding can be dangerous driving, even if it's just for a few seconds, the Supreme Court has ruled.***

In 2015, Mr. Chung was driving down a street in Vancouver. The speed limit was 50 km/h. Over the span of one block, just before a major intersection, Mr. Chung moved into the curb lane. He passed at least one car on the right and dodged another while accelerating to 140 km/h. He hit a car that was turning left. The driver of the other car died. Mr. Chung was charged with dangerous driving causing death.

To be guilty of a crime, a person must *do* something that is against the (criminal) law. This is called the “*actus reus*,” which means “guilty act” in Latin. But something has to make the person *responsible* for what they've done. This is called the “*mens rea*,” which means “guilty mind” in Latin.

For many crimes, *mens rea* is based on intent. But for some crimes, a person can be responsible even if they don't mean to do anything wrong. In these cases, a judge doesn't have to look at what the person themselves was thinking. Instead, they will look at what an ordinary, sensible person (a “reasonable person”) would have done. If the actions of the accused person and the “reasonable person” are very different, this is called a “marked departure from the standard of care.” This “marked departure” is the *mens rea* for crimes like dangerous driving causing death. The *actus reus* for this crime is driving in a way that is dangerous to the public and that results in death.

The trial judge said Mr. Chung's extreme speeding over a short distance met the requirement for the *actus reus*. But he didn't think Mr. Chung had the *mens rea* or guilty mind. He said the brief period of speeding, on its own, wasn't enough to establish the *mens rea* for dangerous driving causing death.

The Crown appealed. When someone is found not guilty, the Crown can only appeal if the judge made a legal error. It can't appeal just because the decision is unreasonable. The Crown said the trial judge made legal errors in this case.

The Court of Appeal agreed that the trial judge made a legal error by concluding that speeding over a short period of time wasn't enough to show a “marked departure.” Since the trial judge made all the necessary findings of fact, the Court of Appeal could find that Mr. Chung had the *mens rea* for dangerous driving. Without the error, the trial judge would have found Mr. Chung guilty. So the Court of Appeal replaced the “not guilty” finding with “guilty.”

The majority of judges at the Supreme Court of Canada agreed that the trial judge made legal errors. They said the trial judge focused on comparing what Mr. Chung did to specific things people had been found guilty for in other cases. He also focused on the fact that his speeding was for a short period of time. But these weren't the right things to focus on. The trial judge should have looked at whether a reasonable person would have foreseen a danger to the public and what they would have done in the situation. The trial judge should have compared this to what Mr. Chung did, and then decided if his conduct was a “marked departure.” The majority said that Mr. Chung's conduct was a “marked departure.” They said a reasonable person would have foreseen that quickly accelerating toward a major intersection at a high speed would create a risk, almost immediately, of hurting someone.

The majority of judges said that a reasonable person understands that driving, by nature, is risky. They said the faster someone drives, the harder they accelerate, and the more aggressively they deal with traffic, the more risky it becomes. They said that even careful driving can have tragic results. But some conduct is so dangerous it deserves criminal punishment, like in this case. The majority confirmed that Mr. Chung was guilty of dangerous driving causing death.

The Supreme Court needs to give permission to hear appeals in most cases. One exception is when a Court of Appeal overturns a “not guilty” decision. That's what happened in this case, so Mr. Chung had a right to appeal without permission. This is called an appeal “as of right.”

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**Breakdown of the decision:** *Majority:* Justice Sheilah [Martin](#) dismissed the appeal (Justices [Brown](#), [Rowe](#), and [Kasirer](#) agreed) | *Dissenting:* Justice Andromache [Karakatsanis](#) said the trial judge had a reasonable doubt on the facts of this case and he did not make legal errors that would justify interfering with his conclusion, so she would have allowed the appeal and restored the acquittal

**More information (case # 38739):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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