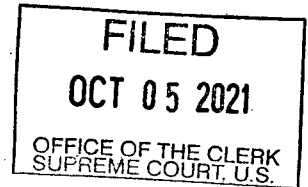


No. 21-6532

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Mary Kruppe

— PETITIONER

(Your Name)

vs.

People of the State of CA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeal of the state of CA, Second Appellate District, Division Five
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mary Kruppe

WG5269

(Your Name)

PO Box 1508

(Address)

Chowchilla, CA 93610

(City, State, Zip Code)

(Phone Number)

Questions Presented

In *People v. Watson* (1981) 30 Cal.3d 290, the Appellate court dramatically expanded the law of homicide: a defendant whose conduct would once have left her vulnerable to a conviction of vehicular manslaughter might now face a murder charge on the theory that her conduct crossed the line between recklessness and maliciousness. Despite this expansion, however, the Court cautioned against the overuse of the new doctrine. "Moreover, we neither contemplate nor encourage the routine charging of second degree murder in vehicular manslaughter cases." (Id. at 301). The passage of time has revealed little respect for that caution, and not one of the many vehicular murder cases draw a meaningful line between conduct that constitutes recklessness and that which constitutes maliciousness. The Appellant's case is a perfect vehicle; it is a "close case" (Opn 13) whose facts fall short of those that have upheld a finding of malice in the past. If the facts of this case amount to malice, then truly there is no difference between the two crimes and a murder conviction can be sought under virtually any circumstance involving DUI. Appellant urges this court to grant review and to hold that the facts are insufficient to support a conviction of murder and deprives the defendant of due process under both state and federal constitutions. (*Jackson v Virginia* (1979) 443 U.S. 307, 318; *People v Johnson* (1981) 26 Cal.3d 557, 576-577)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

People v. Kruppe, No. B305713, CA 2nd District Court of Appeal, Judgment entered May 20, 2021.

People v. Kruppe, No. MA075130, Superior Court of Los Angeles County, Judgment entered February 3, 2020.

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People v. McCarnes (1986), 179 Cal. App 3d 525

People v. Murray (1990), 225 Cal. App. 4th 734

People v. Watson (1981), 30 Cal. 3d 290

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Statutes and Rules

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Appeal, 2nd District, Div. 5 court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 5/20/21.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 7/28/21, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

US. Constitution, Amendment 14, section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Penal Code 187, section a: Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

Penal Code 188, section a: For the purpose of section 187, malice may be express or implied. (2) Malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Penal Code 191.5, section a: Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the vehicle code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

Statement of the Case

Defendant and Appellant Mary Noel Kruppe drove her car while under the influence of alcohol, exceeded the speed limit, crossed over the center line, and collided with another vehicle in a head on collision, killing the other driver. She was charged by amended information with one count of murder (Pen Code § 187) and one count of gross vehicular manslaughter while intoxicated (Pen. Code § 191.5, subd(a)). Defendant pleaded not guilty and proceeded to jury trial. The jury found defendant guilty as charged. She was sentenced to 15 years to life in prison for the murder, with a ten year term on the manslaughter stayed under section 654.

Upon appeal, she argued the evidence was insufficient to establish the requisite mental state of implied malice. Four factors are identified as relevant for upholding a murder conviction based on drunk driving: (1) a blood alcohol level above the .08 percent legal limit; (2) a predrinking intent to drive; (3) knowledge of the hazards of driving while intoxicated; and (4) highly dangerous driving. These factors are useful for analysis of implied malice. The appellate court affirmed the lower court's decision. They stated it was a "close case". The "test is limited to whether, under the totality of the circumstances, the jury could have concluded the defendant possessed the requisite mental state - specifically that she possessed a subjective awareness that her conduct

1 endangered the life another.

2 The Supreme Court of California
3 did not review the case.

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Reasons for Granting the Petition

To find a defendant guilty of vehicular murder, the prosecution must prove that she harbored implied malice; malice may be implied when a person, knowing that her conduct endangers the life of another, nonetheless acts deliberately with conscious disregard for life. (People v. Watson, supra, 30 Cal. 3d 290, 296.)

The test is subjective; it requires that the defendant actually appreciated the risk of her actions. (Id. at 296-297)

Although the Watson court did not specify any particular factors that are determinative on this question, the courts of Appeal have focused on four significant indicators: the level of a defendant's intoxication; an intent to drive before drinking; knowledge of the hazards of driving while intoxicated; and very dangerous driving. (People v. Wolfe, supra, 20 Cal. App. 5th 673, 683)

Analyzing those four factors here, the Court of Appeal concluded that they added up to implied malice.

The court's calculation is wrong. Although appellant cannot dispute the seriousness of the evidence that her blood alcohol level was .23 at the time of the crime, that fact, taken together with the other factors, simply does not show malice.

For example, the Court of Appeal agreed that there was no "direct" evidence of a predrinking intent to drive (Opn 10). Nevertheless, the Court used the evidence

1 that the appellant had, on other social occasions
2 rejected a friend's advice to take an Uber, to infer
3 that on this occasion she must have intended to
4 drink and drive. But here, there is no evidence at all of
5 what appellant planned to do between the time she left
6 school at 2:30pm, and the time of the accident four and
7 a half hours later. The only evidence is that, during
8 that time, she had at least four drinks. (Compare, *People*
9 *v. Autry* (1995) 37 Cal App 4th 351 [Defendant's probation officer
10 told him repeatedly not to drink and drive, including on the
11 day of the crime].)

12 The Court of Appeal also attached great significance to
13 appellant's work on Red Ribbon Week (Oct 10-12). Certainly
14 any person functioning in society today knows that
15 drinking and driving is a bad thing; anyone who oversees
16 a program to teach that to children knows it as well.
17 But does that awareness - in a person who has never
18 encountered the deadly consequences of drunk driving - amount
19 to conscious disregard for life?

20 Every defendant who drinks and drives acts recklessly.
21 But vehicular murder requires more than recklessness.
22 A defendant who knows on an academic level - that drinking
23 and driving is dangerous - has a different level of awareness
24 than one who has had prior DUI convictions and has been
25 required to attend classes; those defendants surely know
26 that they are engaging in life-endangering behavior.
27 (See eg *People v. Wolfe*, *Supra*, 20 Cal App 5th 1673, 1682-1683;
28 *People v. McLarnes* (1986) 179 Cal App 3d 525, *People v. Autry*,

1 supra, 37 Cal App 4th 351, 355-358) So, too, the defendant
2 who has a near miss and keeps going. They are the ones
3 who harbor malice.

4 Finally, the court assessed the "highly dangerous
5 driving" factor. (Opn 12-13) The court's analysis of this
6 factor, too, does not support its conclusion. As the
7 opinion notes, the evidence is that appellant was going
8 over the speed limit when she drifted into another
9 lane for five seconds. No one could dispute that such
10 conduct is both dangerous and reckless. But, it is a far
11 cry from other comparable cases. (Compare, People v Autry,
12 supra, 37 Cal App 4th 31 [defendant drives wildly, narrowly
13 avoiding accidents and refusing his passengers requests
14 to slow down]; People v Murray, supra, 225 Cal App 3d 734
15 [defendant swerves over freeway causing many accidents
16 before driving the wrong way and killing four people].)
17 If there is to be a difference between vehicular manslaughter
18 and vehicular murder, the defendant who veers left
19 for five seconds must be in a different category than
20 the defendant who leaves the freeway behind him
21 in shambles.

22 The Court of Appeal did draw a comparison
23 with one other case. People v. Batchelor (2014) 229
24 Cal App 4th 1102, reversed on other grounds in People v Hicks
25 (2017) 4 Cal 5th 203. That case, in which the Court of
26 Appeal upheld a murder conviction, does have many
27 similarities to this one - a similar level of alcohol, a
28 similar level of speed over the limit, and a single

1 accident. But even that case had one key
2 difference; the defendant there had a prior
3 conviction for drunk driving.

4 The evidence in this case leaves many questions
5 unanswered. There was no evidence of what
6 happened before the appellant got into her car
7 that night. No evidence of where she drank,
8 what she drank, with whom she drank, when she
9 decided to drink, or why. There is no evidence of
10 dangerous driving before the accident - no calls
11 to 911 beforehand, no witnesses to the actual
12 collision. There is no evidence that appellant
13 got into her car over someone's objection. As a
14 result, the jury reached its finding of malice
15 without any of the evidence typically associated
16 with a vehicular murder case. The defendant
17 was drunk, she knew she shouldn't drink and
18 drive, and she got into an accident. If this
19 evidence suffices to show malice, then
20 the Court's intent in Watson to neither
21 "contemplate nor encourage the routine
22 charging of second degree murder in
23 vehicular manslaughter cases" will have
24 been for naught (People v Watson, supra,
25 30 Cal 3d at 301.) The Court of Appeals opinion
26 effectively eliminates the distinction between manslaughter and
27 murder, and even if it existed, there was insufficient evidence to
28 determine the appellant acted with conscious disregard for life.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MR

Date: 10/5/21