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Manslaughter by Automobile - Johnson v. State

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Manslaughter By Automobile

Johnson v. State[1]

Defendant was driving north on William Street, a one-way four-lane highway in Baltimore City, at about 1:50 A. M. About 150 feet past the intersection of William and York Streets there is a sharp curve in William Street, with a curb on the northeasterly side. Defendant's automobile struck the curb, then sideswiped a nearby light pole, and wound up in a grass plot more than 600 feet from the light pole. The deceased, a passenger in defendant's car, was thrown from the automobile, and died a week later as a result of injuries sustained. A witness for the State testified that she was driving north on William Street and, at the intersection of York Street, defendant's automobile passed her on the right, going about 60 miles per hour. However, on cross-examination, she testified that she did not know how fast he was going. Defendant testified that he was going 35 miles per hour, that he lost control of his car when he ran over railroad tracks shortly before entering the intersection of William and York Streets, and that he had no further recollection until the automobile came to rest on the grass plot. The trial judge, sitting without a jury, found the defendant guilty of manslaughter because his speed was excessive, and he was therefore unable to control his automobile. The Court of Appeals reversed, holding that on the evidence submitted, the speed indulged in, considering the time and place, was not so excessive as to constitute gross negligence within the meaning of the manslaughter by automobile statute, which reads:

> "Every person causing the death of another as the result of the driving, operation or control of an automobile, . . . in a grossly negligent manner, shall be guilty of a misdemeanor to be known as 'manslaughter by automobile, . . .' "[2]

The Court repeated the rule, found in the previous Maryland cases arising under this statute, that:

> ". . . to constitute gross negligence, the conduct of the defendant must be such as to amount to a wanton or reckless disregard for human life or for the rights of others."[3]

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[1] 213 Md. 527, 132 A. 2d 853 (1957).
[2] 3 MD. CODE (1957) Art. 27, Sec. 388.
[3] *Supra*, n. 1, 531.

The Court said that although the speed may have been enough to establish ordinary negligence sufficient for civil liability, it was not enough, considering that the street was a one-way four-lane highway, that the time was the early morning, and that there was little traffic, to constitute gross negligence. The opinion also uses the phrase " 'criminal indifference to consequences' " as a test for gross negligence.[4]

The chief difficulty in cases of manslaughter by automobile is determining what conduct constitutes gross negligence and what falls short. Do the phrases "wanton or reckless disregard for human life" or "criminal indifference to consequences" furnish any more explicit standard by which to judge a set of facts than the phrase "gross negligence"? If they do, just what type of conduct renders one criminally liable with reference to these standards? If they do not, is it possible to formulate more precise standards in this area and would more precise standards be more desirable?

The first Maryland case under the manslaughter by automobile statute was *Hughes v. State*.[5] The Court there cited with approval a footnote in the MARYLAND LAW REVIEW[6] to the effect that the common law standard of "gross negligence" as the minimum requirement for manslaughter in an unintentional homicide was carried over into the statute setting up the separate crime of manslaughter by automobile or other vehicle. It was held that the test for gross negligence was whether the defendant's conduct amounted to a " 'wanton or reckless disregard for human life'."[7] In that case, the Court had no difficulty in affirming the conviction, as the defendant swerved his truck toward a group of men on the side of the road, striking a parked vehicle on which the deceased was sitting. There, from the facts as reported, the defendant's conduct seemed dangerously close to intentional.

The next case decided by the Court of Appeals, *Duren v. State*,[8] is perhaps the most important. There the defendant struck the deceased, a pedestrian who had been drinking, at an intersection in a congested residential and business area of Baltimore City. There was a conflict among witnesses as to the defendant's speed, one saying 60 miles per hour and another saying 35, although long skid marks leading up to the intersection and beyond suggested that

[4] *Ibid*, 532.
[5] 198 Md. 424, 84 A. 2d 419 (1951).
[6] 8 Md. L. Rev. 47, 51 (1943), n. 14.
[7] *Supra*, n. 5, 432.
[8] 203 Md. 584, 102 A. 2d 277 (1954).

the defendant was going at a fairly high rate. The defendant had the green light. The Court affirmed the conviction, saying that the environment in which speed is indulged in determines whether it constitutes gross negligence. The Court quoted the New York Court of Appeals, saying gross negligence meant:

> "'. . . disregard of the consequences which may ensue from the act, and indifference to the rights of others. No clearer definition, applicable to the hundreds of varying circumstances that may arise, can be given. Under a given state of facts, whether negligence is culpable is a question of judgment'."[9]

However, on the facts of the *Duren*[10] case, some may doubt that the Maryland Court of Appeals is really doing what it says it is, *i.e.*, requiring something substantially more than ordinary negligence. It is fairly clear that approaching a city intersection at a speed between 35 and 60 constitutes negligence to some degree. But, when the factors of the green light and the apparently frantic attempt to stop, as evidenced by long skid marks, are taken into consideration, do the acts of the defendant amount to such conduct as is connoted by words such as "gross negligence", "wanton and reckless disregard for human life", "indifference to the rights of others", and "a disregard of the consequences which might ensue", all of which are used in the opinion of the Court? It is questionable whether the conduct of the defendant demonstrates as criminal a state of mind as the tests for gross negligence put forth by the Court seem to imply. In the *Duren*[11] case Judge Henderson dissented in language similar to that used by many courts: ". . . I think the evidence must show a degree of negligence that is the substantial equivalent of criminal intent."[12] Also, because of the deceased's having been drinking and walking through a red light, the dissent, while conceding that contributory negligence of the deceased is no bar to criminal prosecution, said that it must be considered in determining the proximate cause of the accident.

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[9] *Ibid*, 590, quoting from People v. Angelo, 246 N. Y. 451, 159 N. E. 394, 396 (1927). The New York Court went on to say that ordinarily it is a jury question, but may be a question of law if the negligence is slight. The New York Court said that words like "gross", "wanton", and "reckless" would convey the idea to the jury to guide their action in spite of their indefiniteness. This seems to be an easier approach to the problem than attempting to define more precise standards as a matter of law.

[10] *Supra*, n. 8.

[11] *Ibid.*

[12] *Ibid, dis. op.* 594, 596.

In all of the Maryland cases arising under the manslaughter by automobile statute, with the exception of the *Duren*[13] case, the facts show either that an extreme degree of negligence was present,[14] or conversely that it was questionable whether even ordinary negligence was established.[15] It is evident that Maryland is in agreement with the majority of states in requiring a higher degree of negligence for manslaughter than will sustain a civil suit. It also seems evident, as a result of the *Duren*[16] case, that Maryland does not require so culpable a state of mind as is required in some jurisdictions. Among the various states, there appear to be basically four different views as to what constitutes manslaughter by automobile, although in many instances, the cases within a single jurisdiction show conflict and confusion.

The first three views are based on the presence of negligent or reckless conduct. In a few states, usually by statute, ordinary negligence resulting in death is sufficient for

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[13] *Supra*, n. 8.

[14] In Clay v. State, 211 Md. 577, 128 A. 2d 634 (1957), the Court of Appeals affirmed a conviction of manslaughter where the defendant struck the deceased at a crosswalk while speeding up to pass another vehicle, and then left the scene of the accident without notifying anyone or reporting the accident. The accident happened under a street light, and there was evidence that the defendant was drinking heavily and driving at excessive speed. The Court said that the previous Maryland cases arising under the statute have firmly established the test for gross negligence as being conduct, considering all the factors of the case, such as amounts to a "wanton or reckless disregard for human life", and felt the facts of this case met the test. In Lilly v. State, 212 Md. 436, 129 A. 2d 839 (1957), a conviction of manslaughter was affirmed where the defendant, in Baltimore City, went through a stop sign and collided with a bus, killing the passenger in his car. The defendant had been drinking, although he was not intoxicated, and a witness testified he was going between 50 and 60 miles per hour. The drinking, going through a stop sign, and excessive speed, were held to furnish ample evidence of gross negligence. In regard to the problem of proof of intoxication, see: Burgee, *A Study of Chemical Tests For Alcoholic Intoxication.* 17 Md. L. Rev. 193 (1957).

[15] In Thomas v. State, 206 Md. 49, 109 A. 2d 909 (1954), the Court of Appeals reversed a conviction for manslaughter by automobile where the defendant, approaching a bridge and seeing two boys on the bridge in the right lane of traffic, swerved to the left in order to avoid hitting them, whereupon the boys ran to the left side, directly in the path of the vehicle, and were hit and killed. The trial judge based the finding of gross negligence on the ground of intoxication, as the defendant, between 10:30 A. M. and 3:30 P. M., the time of the accident, had consumed six bottles of beer. The Court of Appeals held that the evidence with regard to intoxication was not sufficient to warrant a finding that the defendant was guilty of gross negligence, as no witnesses testified that he appeared to be intoxicated, no tests were performed to determine whether he was under the influence of alcohol, and no testimony was offered as to the intoxicating effect of six bottles of beer over such a period of time.

[16] *Supra*, n. 8.

criminal liability.[17] Contrariwise, a few states seem to require a higher degree of negligence than is required in Maryland.[18] In *Holder v. Fraser*,[19] where the Arkansas involuntary manslaughter statute punished driving with ". . . reckless, willful or wanton disregard of the safety of others",[20] the Court said:

> "Recklessness is more closely akin to intent than is sometimes realized. It has been described as conduct involving a risk to others that is out of all proportion to its own utility. As the disproportion between utility and risk increases, a point is reached at which the degree of culpability becomes indistinguishable from that inherent in activity by which harm to others is consciously intended. . . . We have said that willful negligence involves consciousness of one's conduct and contains an element equivalent to constructive intent."[21]

However, the large majority of states, both in the language used and in the application of the rules to fact situations, appear to be in accord with the Maryland position of requiring something more than ordinary negligence but not such a high degree of negligence as is connoted by phrases such as "equivalent to intent", and "knowledge of consequences".[22]

The fourth position, taken by a substantial number of states, is the application of the misdemeanor-manslaughter rule in cases of death resulting from the operation of a vehicle. Essentially the rule is that if death results from

[17] See People v. Ross, 139 Cal. App. 706, 294 P. 2d 174 (1956); Solar v. United States, 94 A. 2d 34 (D. C. App. 1953).

[18] See Holder v. Fraser, 215 Ark. 67, 219 S. W. 2d 625 (1949); People v. Crego, 395 Ill. 451, 70 N. E. 2d 578 (1947), where the Court held that before a verdict of guilty in an automobile manslaughter case can be sustained, the proof must show that the defendant knew of the danger of collision and recklessly or wantonly ran down and collided with the deceased. See also State v. Adams, 359 Mo. 845, 224 S. W. 2d 54 (1949), a case where death resulted from a collision at an intersection, where the Court held that the defendant's intoxication and his failure to stop at a stop sign were not decisive factors to convict him of involuntary manslaughter, but could be considered with other facts in determining his guilt under the circumstances.

[19] *Ibid.*

[20] ARK. STATS. (1947) §41-2209.

[21] Holder v. Fraser, *supra*, n. 18, 626.

[22] See Trujillo v. People, 133 Col. 186, 292 P. 2d 980 (1956); Smith v. State, 65 So. 2d 303 (Fla. 1953); Sullivan v. State, 213 Miss. 14, 56 So. 2d 93 (1952); State v. Clarkson, 58 N. M. 56, 265 P. 2d 670 (1954); People v. Angelo, 246 N. Y. 451, 159 N. E. 394 (1927). In State v. Homme, 226 Minn. 83, 32 N. W. 2d 151, 153 (1948), where the statute made gross negligence resulting in death the basis for criminal liability, the Court said that, although gross negligence means very great negligence, it does not require ". . . such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong."

the doing of an unlawful act, it is involuntary manslaughter. The application of the rule is generally limited (although the limitation is not always stated) to misdemeanors *"malum in se"*, misdemeanors naturally dangerous to life or misdemeanors made such because of a desire of the legislature to avoid the particular kind of death involved in the case under consideration. These limitations may be applied singly or in combination. Sometimes the rule that the unlawful act must be the proximate cause of death is used to express a similar kind of limitation. These limitations would not seem to prevent the use of the misdemeanor-manslaughter rule in most traffic violation cases, unless the violation is a petty offense, less than a misdemeanor, or unless the *malum in se* test is taken as conclusive and traffic misdemeanors are held to be only *mala prohibita*.[23] Although none of the Maryland cases concerning manslaughter by automobile mention the rule, it has been recognized in older Maryland cases.[24]

There is an excellent discussion of the misdemeanor-manslaughter rule in *State v. Hupf*,[25] where the Supreme Court of Delaware applied the rule in a case where death resulted from violating the traffic law. The Court said:

> "The textbooks have followed generally this division of involuntary manslaughter into two classes, one characterized by the commission of an unlawful act, and the other by the doing of a lawful act in a negligent (or grossly negligent) manner."[26]

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[23] In Rex v. Nickle, 34 Can. Cr. Cas. 15 (1920), where the jury found that the defendant was not negligent in striking the deceased with his automobile, the Supreme Court of Alberta reversed an acquittal and ordered a new trial, because the trial judge refused to instruct the jury that even if they did not find the accused to be negligent, they should still convict him if they found he was violating the Motor Vehicle Act by driving at an excessive speed or driving while intoxicated. In Commonwealth v. Williams, 133 Pa. Super. 104, 1 A. 2d 812 (1938), the Court reversed a conviction for involuntary manslaughter where the jury found that the defendant was not negligent, although he was unlicensed (a misdemeanor) when the accident occurred. The Court held that the unlawful act had to be the proximate cause of the accident, and here the violation of the Vehicle Code had no direct relationship to death. However, in Keller v. State, 155 Tenn. 633, 299 S. W. 803 (1927), where the defendant was driving while intoxicated in violation of a statute and convicted, in spite of evidence that the collision could not have been avoided by the exercise of due care, the Court affirmed the conviction, holding that if the unlawful act is *malum prohibitum*, the death must be the natural and probable result of the unlawful act, but if the unlawful act is *malum in se*, as it was here held to be, the law forbids investigation as to probable consequences.

[24] See Neusbaum v. State, 156 Md. 149, 143 A. 872 (1928), and Insurance Co. v. Prostic, 169 Md. 535, 182 A. 421 (1936).

[25] 48 Del. 254, 101 A. 2d 355 (1953).

[26] *Ibid*, 356.

The Court cited several authorities for the position that common law involuntary manslaughter need not be based on negligence alone, and quotes from 1 WHARTON, HOMICIDE, sec. 107:

> " 'Involuntary manslaughter, according to the old writers, is where death results unintentionally, so far as the defendant is concerned, from an unlawful act on his part, not amounting to a felony, or from a lawful act negligently performed'."[27]

Further:

> "As we shall see, the Delaware cases have accepted this classification, although the two concepts — disobedience to law and negligence — have sometimes been confused."[28]

The Court said that where there is a violation of the law, not amounting to a felony, negligence is not an element, but where there is a lawful act, gross negligence is necessary for manslaughter.

The misdemeanor-manslaughter rule is the basis for manslaughter by automobile prosecutions in many jurisdictions, either by statute or by applying the common law.[29] In most of these jurisdictions, the rule is not used to the exclusion of basing prosecutions on gross negligence, but the law is that if death results either from doing an unlawful act or from gross negligence, the defendant is guilty of involuntary manslaughter.[30] Although the majority of cases, where manslaughter by automobile is based on gross

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[27] *Ibid.*

[28] *Ibid,* 357.

[29] See State v. Wheeler, 70 Idaho 455, 220 P. 2d 687 (1950); Schluter v. State, 153 Neb. 317, 44 N. W. 2d 588 (1950); State v. Martin, 164 Ohio St. 54, 128 N. E. 2d 7 (1955). In all three of these cases, it is stated that the violation of the traffic law must be the proximate cause of death.

[30] See Cornett v. Commonwealth, 282 Ky. 322, 138 S. W. 2d 492 (1940), where the Kentucky law is stated as rendering the defendant guilty of voluntary manslaughter if death results from his driving with gross carelessness or in a wanton manner, but if the accident is the result of violating the traffic law or of negligent and careless driving, the defendant is guilty of involuntary manslaughter. See also State v. Tjaden, 69 N. W. 2d 272 (N. D. 1955), where it is first degree manslaughter under the misdemeanor-manslaughter rule. but second degree manslaughter if the killing is the result of "culpable negligence".

In California, if death is the result of driving in a grossly negligent manner, the maximum penalty is five years imprisonment. But if death is the result of either the performing of an unlawful act or of ordinary negligence, the defendant is still criminally liable, with the maximum penalty being one year imprisonment. See People v. Ross, 139 Cal. App. 2d 706, 294 P. 2d 174 (1956).

negligence alone, make no mention of the misdemeanor-manslaughter rule, a few cases have expressly refused to apply the rule in manslaughter by automobile cases.[31]

Negligence itself is an indefinite concept, and when an attempt is made to define degrees of negligence, the problem becomes more difficult. Perhaps the adoption of the misdemeanor-manslaughter rule by Maryland, which would make the defendant who engages in an unlawful act, which is the proximate cause of death, guilty of involuntary manslaughter, would make the law more definite. Under this rule, the presence or degree of negligence is unimportant. In many cases, it would have the effect of making prosecutions for manslaughter easier, and this may be desirable in view of the number of deaths caused by automobiles. The use of such a rule would, of course, entail a judgment that violation of a traffic safety law is sufficiently serious to justify conviction of manslaughter.

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[31] See State v. McLean, 234 N. C. 283, 67 S. E. 2d 75 (1951). See also State v. Neri, 10 N. J. Super. 224, 76 A. 2d 915, 917 (1950), where the Court holds that although violations of the Motor Vehicle Law are elements to take into consideration in determining whether there is willful or wanton disregard of rights or safety of others, ". . . mere violations of regulatory statutes are not sufficient to make a person criminally liable for death".