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Murder by Motorist

MURDER BY MOTORIST

The distinction between involuntary manslaughter and second degree murder is at times difficult to draw in the criminal law. This is particularly true where the death is caused by a motorist. The criminal responsibility which the defendant must bear is usually involuntary manslaughter,[1] but occasionally the crime is murder.

The recent Tennessee case of *Staggs v. State*[2] dealt with an intoxicated motorist who caused the death of another. The defendant sideswiped a car on a lonely country lane; and a board on the bed of his truck pierced the windshield of the other vehicle, striking an occupant therein and causing her death. The defendant was indicted for second degree murder, and was duly tried and convicted. The Tennessee Supreme Court affirmed the conviction.

A death occasioned in this manner may be either involuntary manslaughter or murder.[3] This is the common law rule.[4] It is worthwhile considering what conduct will constitute the crime of murder.

The Tennessee theory appears to be that the intoxication of the

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[1]Chapman v. State, 157 Fla. 463, 26 So. 2d 509 (1946); State v. Hamilton, 149 Me. 218, 100 A.2d 234 (1953); State v. Gulke, 76 N.D. 653, 38 N.W.2d 722 (1949); State v. Rice, 58 N.M. 205, 269 P.2d 751 (1954); State v. Martin, 164 Ohio St. 54, 128 N.E.2d 7 (1955); Commonwealth v. Smith, 178 Pa. Super. 251, 115 A.2d 782 (1955); Richardson v. Commonwealth, 192 Va. 55, 63 S.E.2d 731 (1951).

In recent years, other states have introduced the crime of negligent homicide into the criminal law where the motorist causes death. Listed are some examples of this body of law. Duren v. State, 203 Md. 584, 102 A.2d 277 (1954) [Md. Ann. Code art. 27, § 388 (1957)]; People v. Fedderson, 327 Mich. 213, 41 N.W.2d 527 (1950) [Mich. Stat. Ann. § 750.324 (1948)] State v. Neri, 10 N.J. Super. 224, 76 A.2d 915 (Somerset Co. Ct. 1950) [N.J. Rev. Stat. § 2A:113-9 (Supp. 1953)]; People v. Weidman, 281 App. Div. 1003, 120 N.Y.S.2d 592 (1953) [N.Y. Pen. Code § 1053(a)]; State v. Paris, 43 Wash. 2d 498, 261 P.2d 974 (1953).

[2]357 S.W.2d 52 (Tenn. 1962).

[3]In Edwards v. State, 202 Tenn. 393, 304 S.W.2d 500, 502 (1957), the court said: "A homicide of this character, generally speaking, is either involuntary manslaughter... or second degree murder... dependent upon the facts of each particular case."

[4]"At common law, murder is the unlawful killing of any human being with malice aforethought, either express or implied by law... Malice is implied by law... by an act willfully done or a duty willfully omitted and the natural tendency of the act or omission is to cause death or great bodily harm... ."Clark & Marshall, Law of Crimes 561 (6th ed. 1958).

In speaking of the common law rule as applied to situations involving an intoxicated motorist, it has been said: "Driving while intoxicated is an offense which is malum in se. It is an act of such an unlawful and culpably negligent character that if death results the driver is guilty of at least manslaughter. If he is driving in a reckless and wanton manner, the resulting homicide would be murder." 3 Wharton, Criminal Law and Procedure 143 (12th ed. 1957).

motorist is a highly relevant factor. In *Edwards v. State*,[5] the court said:

> "It is inconceivable that a man can get as drunk as Edwards was on that occasion without previously realizing that he would get in that condition if he continued to drink. But he did continue to drink and presumably with knowledge that he was going to drive his car back to, or close to, Lebanon over this heavily traveled highway. He knew, of course, that such conduct would be directly perilous to human life. From his conduct in so doing, it was permissible for the jury to imply 'such a high degree of conscious and willful recklessness as to amount to that malignity of heart constituting malice.' "[6]

This is a statemnt of the common law theory of murder, where malice is based on wanton or reckless conduct, as distinguished from purposeful killing.[7]

From the Tennessee cases, it seems the primary factor in determining whether the crime is murder is whether the defendant was intoxicated.[8] Tennessee has reversed a conviction where the defendant was not intoxicated, but only speeding.[9] It may be that in the original application of the law in Tennessee an additional factor was important. The earliest case in which the accused was convicted of second degree murder involved not only intoxication, but an element of showing off as well.[10] Under the more recent Tennessee cases this factor no longer needs to be present.[11]

South Carolina and Georgia seem to take a similar approach. In the South Carolina case of *State v. Mouzon*,[12] a conviction of murder

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[5]202 Tenn. 393, 304 S.W.2d 500 (1957).

[6]Id. at 503.

[7]U.S. v. Freeman, 25 Fed. Cas. 1208 (15,162) (C.C. Mass. 1827). In this case a seaman fell to his death from the rigging of his ship. The defendant had sent him aloft. Justice Story said that if the defendant knew or should have known such actions might cause harm to the deceased, then "the jury can justly infer that it must have been presisted in from personal malice to the deceased, or from such a brutal malignity of conduct, as carries with it the plain indications of a heart regardless of social duty, and fatally bent on mischief. If so, it was murder." Accord, Brown v. Commonwealth, 13 Ky. L. Rep. 372, 17 S.W. 220 (1891).

The court sets out the Tennessee theory: "The defendant cannot escape the penalty of the law upon the theory that the attending circumstances of the alleged criminal act failed to bring it within the statutory definition of murder or voluntary manslaughter." Rogers v. State, 196 Tenn. 263, 265 S.W.2d 559, 560 (1954).

[8]Stallard v. State, 209 Tenn. 13, 348 S.W.2d 489 (1961).

[9]Shorter v. State, 147 Tenn. 355, 247 S.W. 985 (1922).

[10]Owen v. State, 188 Tenn. 459, 221 S.W.2d 515, 519 (1949), in which the defendant was trying to frighten some pedestrians, two of whom he struck and killed.

[11]Stallard v. State, 209 Tenn. 13, 348 S.W.2d 489 (1961); Edwards v. State, 202 Tenn. 393, 304 S.W.2d 500 (1957); Rogers v. State, 196 Tenn. 263, 265 S.W.2d 559 (1954). Accord, Ware v. State, 47 Okla. Crim. 434, 288 Pac. 374 (1930).

[12]231 S.C. 655, 99 S.E.2d 672 (1957).

was affirmed when the defendant killed a pedestrian in a hit and run accident, the court finding that "there is evidence of such recklessness and wantonness as to indicate a depravity of mind and disregard of human life. . . ." to support the conviction. In *State v. Long*,[13] the Supreme Court of the state said: "It is gross and culpable negligence for a drunken person to attempt to guide and operate an automobile upon a public highway, and one so doing, and occasioning injuries to another, causing death, may be guilty of murder or manslaughter, as the facts may determine."[14]

Georgia has an unusual statutory structure.[15] If the actions of an intoxicated motorist are such as "naturally tend to destroy human life" the offense is murder.[16] In the case of *Josey v. State*,[17] the court affirmed a conviction of murder when the defendant struck and killed a participant in a parade, holding that the acts were reckless and wanton, the equivalent of a specific intention to kill. Georgia, like Tennessee, has reversed convictions of murder where only speeding was involvd.[18]

Reported cases from other states seem to follow a somewhat different standard as regards the nature of conduct necessary to establish murder. These states require some element of showing off or at-

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[13]186 S.C. 439, 195 S.E. 624 (1938).

[14]Id. at 627.

[15]The Georgia statutes, by interrelation of the code sections allow conviction of murder in this instance. The theory is as follows. Ga. Code Ann. § 26-1001 (1953) provides: "Homicide is the killing of a human being and is of three kinds—murder, manslaughter, and justifiable homicide."

Murder is defined in Ga. Code Ann. § 26-1002 (1953) as "the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either expressed or implied." Implied malice is then defined in Ga. Code Ann. § 26-1004 (1953) as the instance "where no considerable provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart."

Finally, in Ga. Code Ann. § 26-1009 (1953) involuntary manslaughter is defined: "Involuntary manslaughter shall consist in the killing of a human being without any intention to do so, but in the commission of an unlawful act, or lawful act, which probably might produce such a consequence, in an unlawful manner: Provided, that where such involuntary killing shall happen in the commission of an unlawful act which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent, or of a crime punishable by death or confinement in the penitnetiary, the offense shall be deemed and adjudged to be murder."

[16]Wells v. State, 210 Ga. 422, 80 S.E.2d 153 (1954); Parke v. State, 204 Ga. 766, 51 S.E.2d 832 (1949); Powell v. State, 133 Ga. 398, 18 S.E.2d 678 (1942); Meadows v. State, 186 Ga. 592, 199 S.E. 133 (1939); Jones v. State, 185 Ga. 68, 194 S.E. 216 (1937).

[17]197 Ga. 82, 28 S.E.2d 290 (1943). Accord, Butler v. State, 178 Ga. 700, 173 S.E. 856 (1934).

[18]Huntsinger v. State, 200 Ga. 127, 36 S.E.2d 92 (1945); Smith v. State, 200 Ga. 188, 36 S.E.2d 350 (1945).

tempting to frighten someone to establish murder. Although the fact situations are not always set out clearly, this seems a common ground.

In the Alabama case of *Hyde v. State*,[19] the defendant was swerving the car from side to side when he struck the automobile of the deceased. The court held:

> "If the defendant intentionally ran the car into the Austin or acted with such conscious recklessness as defined above, then the defendant's acts were unlawful and done without just cause or legal excuse, which may constitute malice within the meaning of murder in the second degree, or at least the jury could reasonably draw such conclusion."[20]

Similarly, Alabama, in *Bernes v. State*,[21] approved the theory of conviction of second degree murder when the defendant swerved across the road and killed a pedestrian, although the conviction was reversed on a technical point. Alabama, also, has reversed a conviction of murder when the defendant while speeding, although not intoxicated, was involved in a hit and run death.

The North Carolina case of *State v. Trott*[23] is one of the earliest ones involving the factual situation of the intoxicated motorist causing death, and being convicted of murder. There the defendant, a passenger in the car, and the driver were jointly indicted for murder and convicted of murder in the second degree. In *Trott*, the intoxicated defendants had passed a car parked on the side of a highway. They turned around, and traveling at a high rate of speed, struck the car and killed an occupant therein. The driver did not appeal, but in affirming the conviction of the defendant as an accessory the court said:

> "Murder in the second degree, or murder at common law, is the unlawful killing of a human being with malice aforethought. Malice does not necessarily mean an actual intent to take human life. It may be inferential or implied, instead of positive, as when an act which imports danger to another is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life."[24]

In the later case of *State v. Harvell*,[25] the defendant was swerving

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[19]230 Ala. App. 243, 160 So. 237 (1935).
[20]Id. at 238.
[21]38 Ala. App. 1, 83 So. 2d 607, 609 (1953).
[22]Copeland v. State, 32 Ala. App. 473, 27 So. 2d 224 (1946).
[23]190 N.C. 674, 130 S.E. 627 (1925).
[24]Id. at 629.
[25]204 N.C. 32, 167 S.E. 459 (1933). The distinction betwen involuntary manslaughter and murder in North Carolina is stated in the case of State v. Stansell, 203 N.C. 69, 164 S.E. 580, 581 (1932).