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Criminal Liability for Death Caused by Operation of Motor Vehicles in Wyoming

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CRIMINAL LIABILITY FOR DEATH CAUSED BY OPERATION OF MOTOR VEHICLES IN WYOMING

Justice Parker, writing the opinion of the case of *State v. Wilson*,[1] quoted the following words from Moreland's *A Rationale of Criminal Negligence:*

> . . . A carelessly drawn statute in Wyoming provides that an unintentional homicide in the commission of an unlawful act or by culpable negligence or criminal carelessness is manslaughter.[2]

The law in question in *State v. Wilson* was Wyoming's involuntary manslaughter statute.[3] The case involved an automobile collision in which a little girl was killed. The Wyoming Supreme Court reversed a conviction of involuntary manslaughter and held that reversible error was committed by the District Court of Goshen County in its denial of the defendant's motion for a bill of particulars. The Supreme Court said that the defendant was misled as to the precise theory upon which the State would prosecute the manslaughter charge because the State had not made it clear whether the claim would be that the homicide resulted from defendant's alleged intoxication, negligence in driving on the wrong side of the road, carelessness in coming on the highway, or some other improper act. Justice Parker went on to say that there had been justifiable criticism of the legislature, both in using alternative, similar terms to define involuntary manslaughter and also in enacting and retaining two other statutes, each referring to deaths caused by unlawful automobile operation,[4] with no correlation of these statutes and no directions to enforcement officials concerning how and when the statutes are to be applied.

The opinion in *State v. Wilson* was written in 1956 and the statutes then in operation were the Compiled Statutes of 1945. The situation today, however, is much the same as it was then, in that the manslaughter statute is the same;[5] the negligent homicide statute which was then Sec. 60-413, W.C.S. 1945, is almost identical;[6] however, what was Sec. 60-138, W.C.S. 1945, respecting the penalty for causing injury or death to a

1. 76 Wyo. 297, 301 P.2d 1056 (1956).
2. Id. at 1065.
3. Wyo. C.S. § 9-205 (1945).
4. Wyo. C.S. §§ 60-138 and 60-413 (1945). Section 60-138 reads as follows: The violation of any of the provisions of this article, except where otherwise provided, by any person, shall be deemed a misdemeanor, punishable by a fine not exceeding six (6) months, or by both such fine and imprisonment; and, if any person operating a motor vehicle in violation of the provisions of this article shall, by reason thereof, seriously maim, injure or disfigure or cause the death of any person or persons, such person shall be deemed guilty of a felony, and upon conviction shall be imprisoned in the penitentiary for not less than one year nor more than fourteen (14) years.
5. Wyo. Stat. § 6-58 (1957).
6. Wyo Stat. § 31-232 (1957). Section 31-232 differs from § 60-413 only in that the legislature has provided in § 31-232 that the director shall revoke the operating privilege of any non-resident convicted of negligent homicide, which provision was not included in § 60-413.

person because of operating a motor vehicle in violation of the provisions of the Motor Vehicle Code, has been changed by dropping therefrom any reference to death or injury caused by motor vehicle operation. The provisions for punishment when death ensues were apparently deleted because they were considered unnecessary in view of the manslaughter and negligent homicide statutes. Injuries from negligent motor vehicle operation ,as distinguished from death therefrom, no longer constituted separate crime, and would be covered by battery statutes.

The statutory situation concerning automobile homicide, then, is much the same now as it was when *State v. Wilson* was decided. It will be the purpose of this article to investigate this area of Wyoming law on deaths from motor vehicle operation in an attempt to determine whether the attending confusion is as serious as it seems to be at first blush. The article will deal largely with involuntary manslaughter and negligent homicide; the range of application and extent of overlapping, if any, of the respective statutes; some problems of proof and procedure; and the sanctions and penalties applicable and available under each statute. Because of the paucity of reported Wyoming cases there is a very meager amount of explicit construction and interpretation of the various provisions and words of the statutes. Therefore it will sometimes be necessary to imply these constructions and meanings from various statements made in the cases. For example, to date, no decision has been reported in which a person has been charged with negligent homicide. The decisions that have been reported indicate that Wyoming prosecutors have instead proceeded under the manslaughter statute in automobile death cases. The article will show that where manslaughter is available, so would a charge of negligent homicide be when the death is the result of motor vehicle operation, although the converse is not necessarily true.

The provisions for involuntary manslaughter, within the general manslaughter statute, read as follows:

> Whoever unlawfully kills any human being . . . involuntarily, but in the commission of some *unlawful act,* or by any *culpable neglect or criminal carelessness,* is guilty of manslaughter, and shall be imprisoned in the penitentiary not more than twenty years.[7] (Emphasis supplied)

A Wyoming statute provides that where homicide is charged, it shall be sufficient in the indictment to charge that the defendant did unlawfully kill the deceased, without the necessity of setting forth the manner or means by which the death was caused.[8] This statute has been held constitutional and not in violation of the provisions guaranteeing due process.[9] Justice Parker has pointed out, however, that while such word-

7. Supra note 4.
8. Wyo. Stat. § 7-134 (1957).
9. State v. Dobbs, 70 Wyo. 26, 244 P.2d 280 (1952); State v. Wilson, 76 Wyo. 297, 301 P.2d 1056 (1956).

ing is sufficient in the first instance, the statutory provisions should not be considered to be restrictive so as to *preclude* the providing of specific information in the interest of justice after the initial filing and during the trial.[10] And, of course, in order to obtain a conviction it must be shown that the defendant killed the deceased either through the commission of an unlawful act or by culpable neglect or criminal carelessness, within the meaning of the statute.

It is plain that in Wyoming ordinary negligence on the part of the defendant is not sufficient to convict him on a charge of involuntary manslaughter, but the negligence must be culpable.[11] Wyoming has also held that the terms "culpable neglect" and "criminal carelessness" are synonymous.[12] The meaning of the words "culpable" and "criminal" is closely akin to that of "willful" or "wanton" and involves circumstances where the offender is aware or should be aware of the probable consequences of his acts.[13] In *State v. McComb,* Justice Blume made the following statement:

> . . . carelessness by reason of driving at a speed that is unreasonable or is such as is *likely* to endanger life or limb is not necessarily criminal carelessness within the meaning of our staute providing for punishment for manslaughter.[14] (Emphasis supplied)

So, it is not enough that life or limb is likely to be endangered, but accompanying this likelihood must be the fact that the actor is aware of such likelihood, or circumstances must be present under which he would be charged with such an awareness.

The majority of Wyoming cases involving manslaughter by automobile are instances in which the prosecution sought to convict the defendant by proceeding under the "unlawful act" portion of the statute.[15] One might wonder whether there is any difference between manslaughter by unlawful act and manslaughter through culpable neglect or criminal carelessness, and if there is, what determines which route the prosecutor will take? The Wyoming Supreme Court has stated that when the unlawful act complained of consists of negligence, it must be more than ordinary negligence and must be culpable or criminal in its nature.[16] But what of the case where negligence is not a factor, or if it is, is not culpable or criminal? Those manslaughter-by-automobile cases in Wyoming which have resulted in convictions all appear to have involved the unlawful act of driving under the influence of intoxicating liquor. Drunken driving has been made a misdemeanor in Wyoming[17] and the commission of such

10. State v. Wilson, 76 Wyo. 297, 301 P.2d 1056, 1064 (1956).
11. State v. McComb, 33 Wyo. 346, 239 Pac 526 (1925).
12. State v. Catellier, 63 Wyo. 123, 179 P.2d 203 (1947).
13. Supra note 11.
14. Id. at 529.
15. In addition to the cases already cited see State v. Cantrell, 64 Wyo. 132, 186 P.2d 539 (1947); Goich v. State, 80 Wyo. 179, 339 P.2d 119 (1959).
16. Supra note 11.
17. Wyo. Stat. § 31-129 (1957).

an unlawful act is malum in se.[18] Misdemeanors malum in se have been defined as, "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."[19] It has been said that driving while intoxicated is an act of such an unlawful and culpably negligent character that the mere fact of so driving takes the place of a criminal intent, and if death results the driver is guilty of at least manslaughter.[20] From the definition of misdemeanors "malum in se" given above and those cited in footnote 18, it would appear that not only driving while under the influence of intoxicating liquor, but the commission of all acts malum in se, resulting in death, would also constitute at least manslaughter, without proof of negligence. Lending support to the premise that negligence is not an element requiring separate proof when the defendant has been charged with an act malum in se, is the fact that in Wyoming automobile manslaughter cases, which as stated before have almost exclusively dealt with drunken driving, negligence has not appeared as a separate issue.[21]

Whether the state proceeds according to manslaughter by unlawful act or by culpable neglect or criminal carelessness, it must prove in any case that the homicide was a proximate result of the violation.[22] In *Goich v. State*[23] an instruction was held to be erroneous which led the jury to believe that the defendant was guilty of manslaughter if guilty either of drunkeness or driving on the wrong side of the highway, as both in that case were needed in order to establish the chain of causation. The court said that "the jury in a criminal case must be instructed as to all of the unlawful acts which are requisite to a conviction on any charge, and the failure to so state must be assumed to have been prejudicial to a defendant who is convicted."[24]

To summarize manslaughter by automobile in Wyoming: it may be accomplished through culpable neglect or criminal carelessness; it may be accomplished by an unlawful act, malum, in se, not a felony. If the unlawful act is a misdemeanor based on negligence, the negligence must be culpable or criminal.

Further proof that this is what the legislature intended is supplied by a reference to the involuntary manslaughter statute of the State of Indiana, the state of origin of Wyoming's statute.[25] The Indiana Statute is identical to that of Wyoming, except that it does not contain provisions involving

18. 3 Wharton, Criminal Law and Procedure § 974 (1957). See also 44 Iowa L. Rev. 558 (1959).
19. 18 Md. L. Rev. 145, 149 (1958).
20. 3 Wharton, op. cit. supra note 18.
21. See State v. Cantrell, supra note 15; State v. Dobbs, supra note 9; Goich v. State, supra note 15.
22. Thompson v. State, 41 Wyo. 72, 283 Pac. 151 (1929).
23. Supra note 15.
24. Id. at 122.
25. Ind. Ann. Stat. § 10-3405 (Burns 1956).

than an act prohibited by positive statute is demanded. The Indiana court negligence. Indiana decisions under this statute make it clear that more has held that unlawful acts may include willful, wanton and reckless acts, implying an indifference to consequences equivalent to criminal intent.[26]

Involuntary manslaughter is of course a felony[27] and is punishable by imprisonment in the penitentiary for a period not to exceed twenty years.[28]

Negligent homicide by motor vehicle, on the other hand, is not a felony, but a misdemeanor.[29] Though Wyoming has had a negligent homicide statute since 1939, the reported cases give no evidence of anyone having as yet been convicted of this crime. The statute provides:

> When the death of any person ensues within 1 year as a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.[30]

Any attempt to ascertain the intended scope of this statute and whether and to what extent it has any effect on Wyoming's involuntary manslaughter staute entails a degree of speculation. In *State v. Cantrell* it was contended that the negligent homicide statute impliedly repealed the involuntary manslaughter statute in regard to automobile homicide cases. In rejecting the contention, Chief Justice Riner first mentioned that the negligent homicide statute failed to deal with involuntary manslaughter in the commission of some unlawful act. He continued:

> Whether . . . the negligent Homicide Act repeals the provisions of the manslaughter statute immediately following the disjunctive "or" . . . or whether both statutes shall be deemed operative as dealing with separate matters and so both should stand intact we do not find it necessary at this time to decide.[31]

Nor has the Wyoming Supreme Court found it necessary to decide that question since. Chief Justice Riner did state that repeals by implication are not favored.[32] Also Sec. 31-232 is almost identical to the provisions of the Uniform Vehicle Code pertaining to negligent homicide[33] and the courts are split on whether the passage of this act effects an implied repeal of manslaughter statutes as they apply to automobile homicide.

What was the intent of the Wyoming legislature when it passed the Negligent Homicide Act? The generally understood purpose for the passage of such acts is that as compared with manslaughter it will tend

26. Dunville v. State, 188 Ind. 373, 123 N. E. 689 (1919); Minardo v. State, 204 Ind. 422, 183 N.E. 548 (1932).
27. For the statutory provisions regarding penalties for felonies and misdemeanors see Wyo. Stat. §§ 6-6 and 6-7 respectively (1957).
28. Supra note 5.
29. Compare Wyo. Stat. § 31-232 and 6-6 (1957), the latter providing that the minimum term of imprisonment in the penitentiary shall be one year.
30. Supra note 6.
31. State v. Cantrell, supra note 15 at 543-544.
32. Id. at 542.
33. Uniform Vehicle Code § 11-903 (rev. 1956).

to make juries more receptive to returning convictions in automobile death cases. The feeling has been that juries are reluctant to find offenders guilty of involuntary manslaughter because of the severe punishment meted out.

A number of alternative possibilities present themselves in Wyoming. First, it is possible that the negligent homicide statute was intended to repeal the involuntary manslaughter provisions in automobile cases, except the unlawful act provision. But the cases evince no reason why one part of the manslaughter statute should be repealed and the other left alone. It has never been held that culpable neglect or criminal carelessness partake of a lesser degree of criminal responsibility than that associated with the unlawful act portion of the statute.

A second possibility is that the Wyoming legislature intended that the element of willfulness or wantoness need not be present in order to find someone guilty of a "reckless disregard for the safety of others." If such was the construction intended, the state would be able to get a conviction in an automobile homicide case when the circumstances and evidence might not justify an involuntary manslaughter charge. Thus, where a prosecutor could prove culpable neglect or criminal carelessness ,he could also prove reckless disregard, but not vice-versa, if we assume that a reckless disregard is not as severe as culpable neglect or criminal carelessness. This view would account for the reduction in the grade of the crime as compared with involuntary manslaughter.

One substantial obstacle to the theory just mentioned is that "reckless disregard for the safety of others" has often been defined in terms of willfulness or wantonness.[34] Too, a Wyoming court, in citing with approval various decisions from other states, appears to equate reckless disregard with wantonness and leaves one with the impression that "reckless disregard" is to mean the same thing as does "culpable neglect or criminal carelessness."[35]

Assuming that "reckless disregard for the safety of others" does mean the same as "culpable neglect or criminal carelessness" a third possibility is introduced. Perhaps the legislature simply intended that the prosecutor have a choice between negligent homicide and involuntary manslaughter, a choice between equals in all respects except as concerns the punishment inflicted. (This was virtually the effect of *State v. Cantrello.*)[36] Such a construction would be in accord with the stated purpose for enacting negligent homicide legislation. If for any reason the state should fear that a manslaughter charge might not stand up, though the evidence seemed sufficient, it could then turn to a charge of negligent homicide, to which the

34. As indicated by the many decisions assembled in "Reckless Disregard of Safety of Others" 36 Words and Phrases 805.
35. State v. McComb, supra note 11 at 528-529.
36. State v. Cantrell, supra note 15.

jury theoretically should be more receptive. Indeed, it is entirely possible that in particular circumstances negligent homicide could be considered an "included offense" to a charge of involuntary manslaughter.

In conclusion the writer repeats words of Justice Parker, written in 1956 in answer to the argument of unconstitutionality directed against the automobile death statutes of Wyoming:

> Neither these criticisms nor the views expressed in defendant's brief convince us of the unconstitutionality of the statutes, but we are of the definite opinion that for the best administration of such negligent homicide law a modernization of the statutes is indicated.[37]

A proper modernization of the statutes could perhaps be accomplished simply by deleting the "culpable neglect or criminal carelessness' part of the involuntary manslaughter statute and retaining the remainder of that statute and the whole of the negligent homicide statute. With the deletion of that language would go any reason for construing "unlawful act" in terms of negligence, which is, at best, confusing. This does not necessarily mean that the scope of the involuntary manslaughter statute would be reduced since, by following the lead of the Indiana court, the Wyoming court could construe the statute to include any willful, wanton, and reckless acts. Then, depending on his feelings as to the effect of the circumstances of the case upon a jury, and of course on his sense of justice, the prosecutor could then choose whether to proceed under the manslaughter statute or the negligent homicide statute.

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37. State v. Wilson, supra note 10 at 1065.