

1990

Criminal Law - Homicide by Vehicle While Driving Under the Influence - Causation

Christopher T. Lee

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

Recommended Citation

Christopher T. Lee, *Criminal Law - Homicide by Vehicle While Driving Under the Influence - Causation*, 28 Duq. L. Rev. 835 (1990).

Available at: <https://dsc.duq.edu/dlr/vol28/iss4/14>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

CRIMINAL LAW—HOMICIDE BY VEHICLE WHILE DRIVING UNDER THE INFLUENCE—CAUSATION—The Pennsylvania Supreme Court has held that the driving under the influence violation must be the direct cause of death and that causation must be proven beyond a reasonable doubt.

Commonwealth v. Lenhart, 520 Pa. 189, 553 A.2d 909 (1989).

On November 19, 1983 at 2:00 a.m. on a two-lane highway in South Fayette Township, Allegheny County, Pennsylvania, William Bateman was killed when his car collided with a vehicle driven by defendant-appellant Ronald C. Lenhart.¹ A blood sample drawn at the hospital where Lenhart had been taken for treatment of his injuries, disclosed a blood alcohol level of 0.21 percent.² An analysis of Mr. Bateman's blood disclosed that it contained no alcohol.³

The police officer who conducted the accident investigation had little experience investigating head-on collisions and conducted his investigation without the help of eyewitnesses and without consulting an expert in the field of accident reconstruction.⁴ Based upon this investigation and the blood test, Lenhart was charged with five motor vehicle offenses⁵ including (1) homicide by vehicle,⁶ (2) reckless driving,⁷ (3) driving on the wrong side of the roadway,⁸ (4)

1. *Commonwealth v. Lenhart*, 520 Pa. 189, 553 A.2d 909, 910 (1989).

2. 533 A.2d at 910.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* Section 3732 of the Pennsylvania Motor Vehicle Code provides:

Any person who unintentionally causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3731 (relating to driving under the influence of alcohol or controlled substance) is guilty of homicide by vehicle, a misdemeanor of the first degree, when the violation is the cause of death.

75 PA. CONS. STAT. ANN. § 3732 (Purdon Supp. 1989).

7. 553 A.2d at 910. Section 3714 provides that "any person who drives a vehicle with careless disregard for the safety of persons or property is guilty of reckless driving, a summary offense." 75 PA. CONS. STAT. ANN. § 3714 (Purdon Supp. 1989).

8. 553 A.2d at 910. Section 3301 provides in relevant part that: "upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway . . ." 75 PA. CONS. STAT. ANN. § 3301 (Purdon Supp. 1989).

driving under the influence (DUI);⁹ and (5) homicide by vehicle while driving under the influence.¹⁰

Through photographs and the testimony of the investigating officer, the Commonwealth established that "there [existed] no skidmarks, that debris from the collision was scattered equally across both lanes of [traffic], and that both vehicles came to rest in their respective lanes, except that the rear of appellant's vehicle overhung the center line by somewhat less than two feet."¹¹ The Commonwealth further established through witnesses that the appellant had consumed three to six beers at a restaurant and bar during a two-hour period prior to the accident.¹²

Lenhart demurred at the close of the Commonwealth's case as to all charges.¹³ The Honorable John O'Brien granted appellant's demurrer as to the first three charges; specifically homicide by vehicle, reckless driving, and driving on the wrong side of the road.¹⁴ In granting Lenhart's demurrer, the trial Judge noted that the investigating officer's testimony revealing that debris was all over the road and that "one could speculate as to what happened here, but the standard here is beyond a reasonable doubt, and I am not so sure that you can say that beyond a reasonable doubt that Defend-

9. 553 A.2d at 910. Sections 3731(a)(1) and 3731(a)(4) are as follows:
Section 3731. Driving under the influence of alcohol. (a) Offense defined.— person shall not drive, operate or be in actual physical control of the movement of any vehicle while

(1) under the influence of alcohol to a degree which renders the person incapable of safe driving.

(4) the amount of alcohol by weight in the blood of the person is .10% or greater.

75 PA. CONS. STAT. ANN. §§ 3731(a)(1) and 3731(a)(4) (Purdon Supp. 1989).

10. 553 A.2d at 910. Section 3735 provides in part:

(a) Offense defined. - Any person who unintentionally *causes* the death of another person as the *direct result* of a violation of section 3731 (relating to driving under the influence of alcohol or a controlled substance) and who is convicted of violating section 3731 is guilty of a felony of the third degree *when the violation is the cause of death* and the sentencing court shall order the person to serve a minimum term of imprisonment of not less than three years.

75 PA. CONS. STAT. ANN. § 3735 (Purdon Supp. 1989). (Emphasis in original).

11. *Lenhart*, 553 A.2d at 910.

12. *Id.*

13. *Id.* at 910. More specifically, Lenhart demurred to all five charges including homicide by vehicle, reckless driving, driving on the wrong side of the roadway, DUI, and homicide by vehicle while DUI. *Id.*

14. *Id.* In granting the demurrer the trial court described the Commonwealth's case as "very weak" as to whether defendant had been driving on the wrong side of the road. The trial judge dismissed the homicide by vehicle charge because it relied upon the driving on the wrong side of the roadway and reckless driving charges which he had already dismissed. *Id.* at 911.

ant's vehicle was on the wrong side of the road . . ." prior to impact.¹⁵ With regard to the last two counts, DUI and homicide by vehicle while DUI, the court took the demurrer under advisement to consider the briefs of the parties.¹⁶

On August 28, 1984, the trial court found Lenhart guilty of the remaining two counts and later sentenced him to serve the mandatory minimum three years but not more than seven years for the homicide by vehicle while DUI,¹⁷ and eleven and one-half to twenty-three months for DUI, to be served concurrently.¹⁸

On appeal the Superior Court affirmed the trial court judgments.¹⁹ The Supreme Court granted Lenhart's petition for allowance of appeal, but limited its review to the homicide by vehicle while DUI conviction.²⁰

In its opinion, the trial court attempted to explain the contradictory findings of guilty on the DUI charge and the homicide by vehicle while DUI while at the same time acquitting Lenhart on count two relating to crossing the center line.²¹ The trial court reasoned that the acquittal was not "based on a finding that appellant's car did not cross the center line, but rather a recognition that all such instances of crossing the line do not constitute a violation of section 3301" (driving on the wrong side of the roadway).²² The trial judge further reasoned, that, although there was no direct evidence that appellant's car crossed the center line and caused the accident, "*there is no other reasonable explanation for this tragic accident.*"²³

The issue before the Pennsylvania Supreme Court was whether the Commonwealth had sustained its burden of proving beyond a reasonable doubt that Lenhart's driving under the influence caused the victim's death, when there were no witnesses to the accident,

15. 553 A.2d at 911. Because the homicide by vehicle count relied upon whether defendant had been driving on the wrong side of the road, the court dismissed that charge in sustaining the demurrer. *Id.*

16. *Id.*

17. *Id.* 75 PA. CONS. STAT. ANN. § 3735 (Purdon Supp. 1989). A person convicted pursuant to this section must serve a mandatory minimum three years. See *supra* note 10 for the relevant language.

18. *Lenhart*, 553 A.2d at 911. 75 PA. CONS. STAT. ANN. § 3731(a) (Purdon Supp. 1989). See *supra* note 9 for the relevant language.

19. *Commonwealth v. Lenhart*, 361 Pa. Super. 635, 517 A.2d 1365 (1985). The Superior Court affirmed the trial court decision without opinion.

20. 553 A.2d at 911.

21. 553 A.2d at 911. (*citing* slip opinion, 10/11/85, at 4 n.3)

22. *Id.*

23. *Id.* (Emphasis in original).

and no identifying skidmarks or debris to indicate which car had crossed the center line.²⁴ The majority opinion,²⁵ held that there was insufficient evidence to prove beyond a reasonable doubt that the appellant caused the accident, and that his conviction for homicide by vehicle while DUI must be set aside.²⁶

Writing for the majority, Justice Flaherty began his analysis by examining the pertinent language of Section 3735²⁷ of the Pennsylvania Motor Vehicle Code.²⁸ Justice Flaherty emphasized that it is clear that the DUI violation must be the cause of death, and that causation must be proven beyond a reasonable doubt, to sustain a conviction under the statute.²⁹ Because the parties stipulated that Mr. Bateman died of injuries suffered in the accident, the majority focused its opinion on whether the defendant's drunk driving caused the accident.³⁰

The Supreme Court referred to the trial court's opinion relating to count three, driving on the wrong side of the roadway, in discussing the issue of whether the Lenhart vehicle crossed the center line.³¹ The Supreme Court pointed out that "common forms of proof, such as eyewitness testimony, skid marks, or accident reconstruction expert testimony, were entirely absent in this case;" therefore the trial judge correctly observed that one could speculate "as to what happened here, but the standard here is beyond a reasonable doubt."³²

Justice Flaherty held that the same reasoning was applicable to the offense of homicide by vehicle while DUI.³³ The Justice further stated that "it is not enough to conclude that appellant's intoxica-

24. 553 A.2d at 911.

25. *Id.* Justice Flaherty wrote the opinion for the majority in which Chief Justice Nix and Justices McDermott, Zappalla, Papadakos and Stout joined. Justice Larsen filed the only dissenting opinion. *Id.*

26. 553 A.2d at 910.

27. Section 3735 is entitled homicide by vehicle while driving under influence. See *supra*, note 10 for the text of this section.

28. 553 A.2d at 911. See *supra* note 10 for the pertinent language of section 3735.

29. 553 A.2d at 911. Justice Flaherty cited *Commonwealth v. Williams*, 463 Pa. 370, 344 A.2d 877 (1975), which required that "in any criminal prosecution, the Commonwealth has an unshifting burden to prove beyond a reasonable doubt all elements of the crime . . ." 344 A.2d at 879. However in regard to the proposition that the driving under the influence must be the cause of death the Supreme Court provided no guiding authority. 553 A.2d at 911.

30. 553 A.2d at 911. After concluding that the DUI charge must be the cause of death, the Supreme Court reduced its inquiry to a factual analysis.

31. *Id.* at 911-12.

32. *Id.* at 911-12 n.1.

33. *Id.*

must be established *beyond a reasonable doubt* in order to sustain the conviction."³⁴ The court concluded that the Commonwealth's evidence failed to establish the necessary proof at trial to prove that Lenhart caused the accident.³⁵ The judgement relating to conviction for a violation of section 3735, homicide by vehicle while DUI, was vacated and the case was remanded only for execution of the sentence imposed under section 3731 for DUI.³⁶

Justice Larsen, in his dissenting opinion, began as did Justice Flaherty in the majority by citing section 3735(a) of the motor vehicle code pertaining to homicide by vehicle while DUI,³⁷ and stated that the elements for this charge were proven beyond a reasonable doubt and he would therefore affirm the lower court's judgement.³⁸ Justice Larsen relied upon *Commonwealth v. Mikulan*³⁹ in finding that there was no question that appellant was properly convicted of violating section 3731 (DUI) by the lower court. In *Mikulan* the Supreme Court held that "[i]t, is now virtually universally accepted that a person with a [blood alcohol percent] of 0.10 should not be driving."⁴⁰

Justice Larsen, in the only dissent, also opined that when a challenge to the sufficiency of the evidence is before the court, the court must view all evidence, both direct and circumstantial, in a light most favorable to the verdict winner, and accept it as true, in deciding whether the Commonwealth had proven its case beyond a reasonable doubt.⁴¹ The Justice further cited *Commonwealth v. Holzer*,⁴² for the principle that a criminal conviction can stand on

34. *Id.* (Emphasis in original) Justice Flaherty submitted that the possibility existed that a sober motorist could have dozed off at 2:00 a.m., lose control of his car, and cause an accident. *Id.* at 912.

35. 553 A.2d at 912.

36. *Id.*

37. 553 A.2d at 912. See *supra* note 10 for the relevant language.

38. *Id.* at 912.

39. 504 Pa. 244, 470 A.2d 1339 (1983). In *Mikulan*, the defendant was charged with driving under the influence of alcohol or a controlled substance, after he nearly collided with a Trailways bus in Pittsburgh. The trial judge granted the defendant's motion to dismiss the charges on the ground that section 3731 was unconstitutionally vague. The Pennsylvania Supreme Court reversed the trial court, finding that the legislature did not exceed the latitude afforded under police powers, nor did it violate any principles of due process. *Id.*

40. 470 A.2d at 1341.

41. 553 A.2d at 912 (citing *Commonwealth v. Pettus*, 492 Pa. 558, 424 A.2d 1332 (1981)). In *Pettus* the appellant was convicted in the trial court of murder of the third degree, conspiracy, and possession of an instrument of crime. Justice Larsen, speaking for the majority, affirmed the lower court. 424 A.2d at 1334.

42. 480 Pa. 93, 389 A.2d 101 (1978). In *Holzer*, the appellant was convicted in a jury trial of first degree murder, robbery and conspiracy and sentenced to life in prison in the

the basis of circumstantial evidence.⁴³ In light of *Mikulan* and *Holzer*, Justice Larsen concluded that the evidence, although circumstantial, when viewed in a light most favorable to the Commonwealth, was sufficient to convict Lenhart of homicide by vehicle while DUI.⁴⁴

In an effort to place the court's decision in perspective, an examination of the history of section 3735 is helpful. The development of Pennsylvania's existing drunk driving law, began when then Governor Richard Thornburgh created the "Task Force on Driving Under the Influence of Alcohol and Other Controlled Substances."⁴⁵ The task force was created by the Governor in response to "shocking" drunk driving statistics⁴⁶ and pressure from lobbying groups such as MADD.⁴⁷ The twenty-member task force divided itself into four special committees: Legislation, Public Information and Education, Enforcement, and Alcohol Highway Safety Programs.⁴⁸ As a result of the combined efforts of the committees, a new comprehensive drunk driving bill was introduced in June 1982.⁴⁹ After filtering through both state houses, the bill was enacted into law on December 15, 1982.⁵⁰ The new drunk driving law,

trial of first degree murder, robbery and conspiracy and sentenced to life in prison in the death of a sporting goods store clerk, who died as a result of his throat being cut. 389 A.2d at 103-104.

43. 553 A.2d at 912.

44. *Id.* at 913.

45. Mancke, *The New Pennsylvania Drunk Driving Law: Last Call for the One-For-The-Road Era*, 87 DICK. L. REV. 805 (1983).

46. *Id.* at 805, 809. According to the Governor's DUI Task Force Report, alcohol-related fatal accidents had increased one hundred and fifty-four percent between 1972 and 1981. Over a ten year period, 250,000 Americans died as a result of drunk driving accidents. This figure represented an average of 25,000 deaths a year, or 68 a day, which was five times the number of U.S. combat deaths in Vietnam. *Id.* at 805 n.1.

47. *Id.* at 809. MADD stands for Mothers Against Drunk Driving. *Id.* at 805 n.3.

48. *Id.* at 810.

The Task force consisted of four members of the Governor's Cabinet, four legislators, three private citizens, two local police chiefs, two highway safety experts, two judges, one county coroner, a psychiatrist and a chief probation officer. The legislation committee concentrated on strengthening the law and streamlining the judicial process. The education committee focused on providing public information, implementing a media campaign, and developing a statewide alcohol highway safety program. The enforcement division strove to streamline arrest procedures and increase DUI training programs for law enforcement agencies. Finally, the prevention branch endeavored to increase community awareness and citizen support.

Id. at 810 n.44 (citations omitted).

49. *Id.*

50. *Id.* at 805. The new law took effect at 12:01 a.m. on January 14, 1983. "The bill's supporters wanted the Governor to sign the bill at an earlier date so that it would take effect in time for the 1982-83 holiday season and possibly reduce the number of alcohol-

in addition to imposing stiffer penalties for first-time drunk driving offenders,⁵¹ also created a new crime: "Homicide by vehicle while driving under the influence."⁵² Similar to other sections of the new law, section 3735 imposes stiff penalties by mandating that a driver convicted under this section serve a minimum of three years in prison, and pay up to a maximum fine of fifteen thousand dollars.⁵³

The early court decisions dealt with, and conclusively settled, the first constitutional issues surrounding the newly enacted statute. The first case challenging section 3735 was *Commonwealth v. Hernandez*.⁵⁴ In *Hernandez*,⁵⁵ the Superior Court addressed two principal attacks on section 3735 by the defendant: (1) the constitutionality of the mandatory sentencing provisions and (2) the constitutionality of the mandatory minimum sentence of 48 hours imprisonment for convicted first-time offenders.⁵⁶ Hernandez's first

related traffic deaths that normally occur during the Christmas-New Year holidays. Instead, Thornburgh repeatedly stated that because of the importance of the new law, he did not want to rush his staff's review of the proposed law." *Id.* n.4.

51. See 75 PA. CONS. STAT. ANN. §§ 3731(e)(1)(i) and 1532(b)(3) (Purdon Supp. 1989), requiring convicted first-time offenders to pay a fine of \$300 to \$5,000, a license suspension of at least one year and to serve at least 48 hours of incarceration.

52. *Id.* at 816. 75 PA. CONS. STAT. ANN. § 3735 (Purdon Supp. 1989). The prior law contained only a general provision, 75 PA. CONS. STAT. ANN. § 3732 (Purdon Supp. 1989) See, *supra*, note 6, which covered all forms of vehicular homicide. This section was retained in the present law and still applies to all non-DUI related homicides. *Id.*

53. 75 PA. CONS. STAT. ANN. § 3735(a) (Purdon Supp. 1989).

54. 339 Pa. Super. 32, 488 A.2d 293 (1985). Judge Wickersham delivered the opinion of the Court. 488 A.2d at 295.

55. 488 A.2d at 295. *Hernandez* involved a head-on collision on Route 850 in Perry County between Hernandez's car and one driven by Kathy Kenée. *Id.* The collision resulted in Kenée's death at age twenty. *Id.* The prosecution produced evidence at trial which showed that appellant was travelling in excess of the speed limit and had crossed the center line into the victim's lane. *Id.* In addition, appellant's blood alcohol content was tested at .26%. *Id.* Appellant was charged with involuntary manslaughter, 18 PA. CONS. STAT. ANN. section 2504(a); homicide by vehicle, 75 PA. CONS. STAT. ANN. section 3732; homicide by vehicle while driving under the influence, 75 PA. CONS. STAT. ANN. section 3735(a); driving under the influence while impaired, 75 PA. CONS. STAT. ANN. section 3731(a)(1); driving under the influence-10%, 75 PA. CONS. STAT. ANN. section 3731(a)(4); and operation of a vehicle with suspended or revoked license, 75 PA. CONS. STAT. ANN. section 1543(a). *Id.* at 295-96.

The jury found appellant guilty on all counts and he was sentenced to the following terms of imprisonment: three to seven years on the homicide by vehicle while driving under the influence conviction; two and one-half to five years on the involuntary manslaughter conviction; two and one-half to five years on the homicide by vehicle conviction; and one to two years on the driving under the influence while impaired conviction. *Id.* at 296.

56. *Id.* at 297-302. The appellant, Hernandez, also challenged the constitutionality of the new law involving the per se drunk at .10% rule of 75 PA. CONS. STAT. ANN. section 3731(a)(4). *Id.* at 300. This section makes it a crime to drive where the level of alcohol in a

argument urged the Superior Court to declare the mandatory sentencing provisions unconstitutional for five different but closely related reasons.⁵⁷ Hernandez first argued that the legislature violated the separation of powers doctrine by prescribing mandatory minimum sentences⁵⁸ and that the sentencing of criminals is better left for the judiciary, rather than the legislature.⁵⁹ The *Hernandez* court struck down appellant's first argument, distinguishing between criminal rights which are "'procedural', over which the judiciary has exclusive and express constitutional authority, and rights which are 'substantive' over which the legislature has the power to declare what acts are crimes and to prescribe the punishment for their commission."⁶⁰ Thus it being the legislature's function to prescribe criminal sanctions, the court held that it was within the legislature's power to establish mandatory minimum terms of imprisonment.⁶¹

person's blood is .10% or greater. Appellant argued that this section is unconstitutional for several reasons: "no rational basis exists for applying the rule to all persons; the rule is vague and uncertain because it fails to provide persons with reasonable notice of the conduct proscribed; and the rule derogates the Commonwealth's constitutionally mandated burden of proof beyond a reasonable doubt and is a conclusive presumption." *Id.* The court stated that "[i]t is now virtually universally accepted that a person with a [blood alcohol percent] of 0.10 should not be driving." *Id.* at 301. The court struck down appellant's argument holding that the rule does nothing more than to "specify a quantum of evidence which is legally sufficient to sustain proof of this element of the crime." *Id.*

Appellant next argued that section 3731(f) is unconstitutional as violative of the separation of powers doctrine because it forces the district justice to bind over trial cases for which a prima facie case has not been made out. *Id.* Section 3731(f) provides in part that the district justice "shall not reduce or modify the original charges." The court struck down appellant's argument because under Pennsylvania Rules of Criminal Procedure 141(d) and 143(a), the district justice has no right to change any of the charges. His job is merely to determine whether a prima facie case exists. *Id.* at 302.

Appellant lastly argued the enhancement provision of section 3731(e) lengthening the term of imprisonment for subsequent convictions is unconstitutional for violating due process and constitutes an unconstitutional ex post facto law, because it applies to convictions under laws in force prior to the effective date of the new drunk driving laws. *Id.* The court summarily struck down appellant's last arguments. *Id.* at 303.

57. *Id.* at 296.

58. *Id.* at 297.

59. *Id.*

60. *Id.* The court did agree with appellant's contention that in certain situations the functions between branches may overlap; however the court believed that these aspects of procedural and substantive rules must remain wholly apart from the control of the others. *Id.*

61. *Id.* The court found no significant difference between the language used in sections 3731(e)(1) and 3735, of the Motor Vehicle Code, and the previously upheld mandatory sentencing provisions in 18 PA. CONS. STAT. ANN. § 1102 and 42 PA. CONS. STAT. ANN. section 9711 (sentences for murder) or 18 PA. CONS. STAT. ANN. § 2704 (sentence for assault by life prisoner). *Id.*

Secondly, Hernandez argued that the mandatory sentencing provisions imposed cruel and unusual punishment in that "convicted persons are automatically sentenced to prison terms for 'unintentional' crimes."⁶² Superior Court Judge Wickersham cited *Gregg v. Georgia*⁶³ for the proposition that the legislature is the most accurate reflection of the "evolving standards of decency"⁶⁴ in the community and further stated that the "mandatory sentences are not disproportionate to the gravity of the problems caused."⁶⁵ Thus the "statutes do not impose a penalty so out of proportion to the crimes as to shock a balanced sense of justice."⁶⁶

In response to the appellant's third argument that the mandatory sentencing provisions violated due process for failing to provide the individual an opportunity to be heard by not allowing him to set forth any mitigating circumstances, the court dismissed it finding that the mandatory minimum sentences allow for the consideration of ameliorative factors in determining the precise sentence between the minimum and maximum allowed under the sentencing code.⁶⁷ The court applied the rational basis test⁶⁸ in finding that the mandatory sentencing provisions "designed by the legislature to protect human life and property, represent sound public policy, are reasonably related to the ends sought to be accomplished, and are not unconstitutionally impermissible."⁶⁹ The court also applied the rational basis test in disposing of the appellant's fourth, but closely related, argument that the mandatory sentencing guidelines violated the Equal Protection Clause because they treat drunken drivers who kill and non-drivers who are drunk

62. *Id.*

63. 428 U.S. 153 (1976). In *Gregg* the U.S. Supreme Court ruled that the death penalty is not "cruel and unusual" with respect to the Eighth Amendment, at least where it is imposed for murder.

64. 488 A.2d at 297-98. (citing *Gregg*, 428 U.S. at 173, 96 S. Ct. at 2925.)

65. *Id.* at 298.

66. *Id.* The court noted that the legislature determined that the current standards of decency are met by mandatory sentencing for convictions under the new drunk driving law. *Id.* at 298.

67. *Id.* at 298. The court noted that the Eighth Amendment requirement for individualized consideration of mitigating circumstances of the offender has not been extended to noncapital offenses. *Id.* See *Commonwealth v. Waters*, 334 Pa. Super. 513, 483 A.2d 855 (1984).

68. *Id.* The U.S. Supreme Court in *United States v. Carolene Products*, 304 U.S. 144 (1938) first set forth the rational basis test. The Supreme Court held that "the existence of facts supporting the legislative judgment is to be presumed . . . unless it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." *Id.* at 152.

69. 488 A.2d at 298.

but kill, differently by not subjecting the latter to a mandatory sentence.⁷⁰ The court held that the classification offered by the appellant was not a suspect classification.⁷¹ Instead the court found the classification between drivers and non-drivers to be rationally related to the legitimate state interest of highway safety.⁷²

The Appellant's last argument in *Hernandez*, with respect to mandatory sentencing, was that mandatory sentence provisions are unconstitutional because they place excessive and unreviewable discretion in the hands of the prosecutor who may elect not to proceed against a certain defendant, if he or she does not wish to see that person subjected to the mandatory provisions.⁷³ The court rejected appellant's contention finding that prosecutorial discretion, in light of the abolition of the grand jury, is not unconstitutional.⁷⁴

Later that same year in *Commonwealth v. Cieri*,⁷⁵ the Superior Court, citing *Hernandez*, rejected identical arguments by Cieri regarding the constitutionality of the mandatory sentencing provisions of section 3735.⁷⁶ Speaking for the court, Judge Spaeth affirmed the lower court's determination finding the appellant's arguments to be without merit.⁷⁷

Other challenges to the sentencing provisions on constitutional grounds have also been unsuccessful. In *Commonwealth v. Kun-*

70. *Id.* at 298-99. The Equal Protection Clause of the Fourteenth Amendment provides that ". . . Nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amend. XIV, section 1.

71. 488 A.2d at 299. In order to fall within a suspect classification, a statutory classification which does not implicate a fundamental interest, must not be rationally related to a legitimate state interest. *Commonwealth v. Hicks*, 502 Pa. 344, 466 A.2d 613 (1983), *appeal dismissed*, 465 U.S. 1015 (1984).

72. 488 A.2d at 299.

73. *Id.*

74. *Id.* In so holding the Superior court agreed with the trial court which stated that "[a] person charged is either guilty or not guilty. The risk that someone will be charged who should not be charged is not of serious concern because of the safeguard of the trial." *Id.* (citing Lower ct. op. at 4).

75. 346 Pa. Super. 77, 499 A.2d 317 (1985). In *Cieri*, Thomas Cieri was convicted of homicide by vehicle while driving under the influence of alcohol or a controlled substance, involuntary manslaughter, reckless endangerment, and driving under the influence. The facts at trial showed that shortly after midnight, Cieri, while driving his car with his brother as a passenger, slammed head on into a car driven by Gary McMillan. Katherine Waldron, McMillan's passenger, died as a result of injuries suffered in the collision. 499 A.2d at 319-320.

76. 499 A.2d at 326.

77. *Id.* See also *Commonwealth v. Kostra*, 349 Pa. Super. 89, 502 A.2d 1287 (1985) again confirming the constitutionality of the mandatory sentencing provisions of section 3735.

selman,⁷⁸ the appellee in the trial court had plead guilty to charges of homicide by vehicle while driving under the influence, involuntary manslaughter, recklessly endangering another person, homicide by vehicle, and other related charges.⁷⁹ The trial judge sentenced the appellant to one and one-half to three years imprisonment to ensure that appellant could serve his sentence in Erie County.⁸⁰ The Commonwealth appealed arguing that the lower court erred in failing to follow the mandatory sentencing provisions of section 3735.⁸¹ The Superior Court, per Judge Tamilia, agreed with the Commonwealth's contention interpreting the phrase "minimum term of imprisonment of not less than three years,"⁸² to require just that; a minimum sentence of three years, not a maximum sentence as the trial court suggested.⁸³ The Superior Court opined that "for the court to impose a minimum and a maximum sentence in violation of the law and then to hold that the parole board is required to obey the law and hold the defendant for the maximum term, frustrates the intent of the mandatory sentence law."⁸⁴

*Commonwealth v. Dungan*⁸⁵ involved an appeal from the imposition of multiple sentences for multiple deaths arising from a single accident. The appellant, Dungan, was charged when two persons in the van he was driving, and three persons in one of the vehicles he struck, were killed.⁸⁶ Dungan was convicted by a jury on five counts of homicide by vehicle and five counts of homicide by vehicle while driving under the influence and two counts of driving under the influence of alcohol.⁸⁷ Thereafter appellant was sentenced to serve three consecutive jail terms of three to six years, two concurrent jail terms of three to six years and to pay the costs

78. 363 Pa. Super. 475, 526 A.2d 443 (1987).

79. 526 A.2d at 443.

80. *Id.* Originally, the trial judge had sentenced Kunselman to three to six years for the homicide by vehicle while driving under the influence charge, with the sentences for the other crimes to run concurrently with the three to six year sentence. He subsequently modified the sentence notifying the prosecution of the change by letter. *Id.*

The trial judge believed the sentence to be in accord with the mandatory guidelines because the Parole Board simply could not release the defendant until he had served his entire three years. He merely assumed that the Parole Board would comply with the law. *Id.* at 444 (*citing* slip op., Nygaard, J. 4/1/86).

81. *Id.* at 443.

82. *See supra* note 10, for the relevant language of 3735.

83. 526 A.2d at 444.

84. *Id.* at 446.

85. 372 Pa. Super. 323, 539 A.2d 817, (1988).

86. 539 A.2d at 818.

87. *Id.* at 819.

of prosecution.⁸⁸ Dungan argued on appeal that it was unlawful for a court to impose multiple sentences for multiple deaths resulting from a single accident.⁸⁹

The Superior Court began its analysis by noting that where it was legislatively authorized, it was legal for a court to impose multiple sentences upon a defendant whose single unlawful act injures multiple victims.⁹⁰ The *Dungan* court found the language of section 3735 identical to the language of section 3732, homicide by vehicle.⁹¹ Finding the language identical to section 3732 and applying the test set forth in the case of *Commonwealth v. Frisbie*,⁹² Judge Tamilia found the multiple sentences for the multiple deaths caused by one single accident to be legislatively authorized.⁹³

The Superior Court has also rejected other challenges to section 3735, including the argument that an element of the offense of homicide by vehicle while driving under the influence required a prior conviction for driving under the influence of alcohol.⁹⁴ In *Commonwealth v. Johnson*,⁹⁵ the appellant was found guilty in a bench trial of driving while under the influence of alcohol, simple assault, and recklessly endangering another person.⁹⁶ In *Commonwealth v. Kelly*,⁹⁷ appellant was convicted by a jury of driving under the influence of alcohol, homicide by vehicle, homicide by vehicle while driving under the influence, and involuntary man-

88. *Id.* at 328.

89. *Id.* at 825.

90. *Id.* at 825. Here the court cited *Commonwealth v. Frisbie*, 506 Pa. 461, 485 A.2d 1098 (1984), where it was held that where the legislature intended to preclude multiple punishments for multiple injuries resulting from a single act, it has expressly done so. 485 A.2d at 1100.

91. *Id.* at 825. Section 3735 provides in part, "Any person who unintentionally causes the death of another person . . ." The Superior Court in *Commonwealth v. Zaengle*, 345 Pa. Super. 124, 497 A.2d 1335 (1985), concluded the legislature authorized multiple sentences resulting from a single violation of section 3732.

92. 506 Pa. 461, 485 A.2d 1098 (1984).

93. 539 A.2d at 826.

94. *Commonwealth v. Johnson*, 376 Pa. Super. 121, 545 A.2d 349 (1988), and *Commonwealth v. Kelly*, 365 Pa. Super. 28, 528 A.2d 1346 (1987).

95. 376 Pa. Super. 121, 545 A.2d 349 (1988).

96. 545 A.2d at 351-352. The facts of the case showed that the appellant, while driving a truck for his employer the Philadelphia Water Department, went through a red light and struck a small red pickup truck. After the collision, appellant's truck continued to move, whereupon it mounted a curb and struck a pedestrian, crushing her against a wall. A sample of blood taken from the appellant after the accident revealed a blood alcohol content of .15%: more than the amount needed to satisfy the section 3731 requirement of .10%. *Id.*

97. 365 Pa. Super. 28, 528 A.2d 1346 (1987).

slaughter.⁹⁸ Both Kelly and Johnson argued on appeal that the language of section 3735 required a prior conviction of driving under the influence.⁹⁹ The relevant language of section 3735 is "Any person who unintentionally causes the death of another person as the direct result of a violation of section 3731. . .and *who is convicted of violating section 3731* is guilty. . ."¹⁰⁰ While the *Johnson* court found the appellants' contention novel, both courts rejected the arguments. The *Johnson* court stated that "strict construction of a penal statute does not require that the words of the statute be given their narrowest meaning."¹⁰¹ To do so, the court suggested, would be to require separate trials for each offense.¹⁰² The *Johnson* court held that it was sufficient that charges of violating section 3731 and 3735 be submitted to the same factfinder.¹⁰³ The *Kelly* court essentially followed the same reasoning the *Johnson* court used in finding that the language of section 3735 was satisfied if both counts were tried concurrently.¹⁰⁴ However the *Kelly* court, following the trial court's opinion, went on to require that the trial court must instruct the jury that they must first find the defendant guilty of driving under the influence before addressing the issue of homicide by vehicle while driving under the influence.¹⁰⁵

The last issue relating to section 3735 of the motor vehicle code addressed by the courts thus far is the issue of causation. The homicide by vehicle while driving under the influence statute on its face requires that the DUI violation be the direct cause of death in order to convict a defendant.¹⁰⁶ Despite the seemingly clear language of the statute, state appellate courts addressing the issue are unclear as to what standard of causation is applicable.

Traditionally, Pennsylvania has not employed the proximate

98. 528 A.2d at 1347. On March 25, 1984, Morgan Kelly, while under the influence of alcohol, lost control of his vehicle, crossed the center line of the road and struck the victim's car, killing her and injuring her husband. A blood alcohol test administered to appellant revealed a blood alcohol level of .24%. *Id.*

99. *Johnson*, 545 A.2d at 353, *Kelly*, 528 A.2d at 1348.

100. 75 PA. CONS. STAT. ANN. § 3735(a) (Purdon Supp. 1989). (emphasis added).

101. 545 A.2d at 354.

102. *Id.*

103. *Id.* The court noted that the statute only requires that there can be no conviction under section 3735 unless there is also a conviction under section 3731. *Id.*

104. 528 A.2d at 1348-1349. (Agreeing with and citing the trial court opinion, Slip. Op., Scarlata, J., 11/26/86, p. 6).

105. *Id.* at 1349.

106. 75 PA. CONS. STAT. ANN. § 3735 (Purdon Supp. 1989). *See supra* note 10 for the relevant language.

cause test in criminal cases.¹⁰⁷ The first appellate court to address the issue of causation in relation to a section 3735 violation decided to follow the reasoning of cases interpreting the causation element of section 3732.¹⁰⁸ In *Commonwealth v. Dixon*¹⁰⁹ the court followed the rationale of the Superior court in *Commonwealth v. Field*¹¹⁰ where the Pennsylvania Supreme Court held that under section 3732 the Commonwealth must show that "at the very least, death was a probable consequence of the conduct."¹¹¹ The *Dixon* court found the reasoning in *Field* persuasive and held that the causation element in that case was satisfied by the fact that the Commonwealth had demonstrated that the appellant knew or should have known that he was violating the law prohibiting driving under the influence, that nevertheless he drove a car and could foreseeably have been involved in an accident involving death.¹¹²

The next appellate case interpreting the causation language of section 3735 was *Commonwealth v. Kostra*.¹¹³ There the appellant argued that he was not the legal cause of the decedent's death, that instead the cause of death was the removal of life support systems used to keep the decedent alive.¹¹⁴ The *Kostra* Court began its analysis by noting that the Commonwealth must prove beyond a reasonable doubt that death occurred as a result of injuries received in the incident or of a chain of events stemming from the

107. Mancke, *Homicide by Vehicle in Pennsylvania: A Question of Meaning and Constitutionality*, 85 DICK. L. REV. 391 (1981). Pennsylvania has traditionally required direct cause in vehicle cases as set forth in the Crimes Code. The Crimes code provides that "conduct is the cause of a result when: it is the antecedent but for which the result in question would not have occurred." 18 PA. CONS. STAT. ANN. § 303(a)(1) (Purdon Supp. 1989). In vehicle cases, a defendant's act in violating a traffic law is not the direct cause of death unless the death would not have occurred but for that violation. *Id.*

108. *Commonwealth v. Dixon*, 346 Pa. Super. 36, 498 A.2d 1358 (1985).

109. 346 Pa. Super. 36, 498 A.2d 1358 (1985).

110. 490 Pa. 519, 417 A.2d 160 (1980)

111. 498 A.2d at 1361. The appellant in *Dixon* had argued that the section 3735 is void for vagueness in failing to define the phrase "when the violation is the cause of death." *Id.* The court, citing *Commonwealth v. Burt*, 490 Pa. 173, 415 A.2d 89, (1980), in which the Supreme Court rejected a similar argument with regard to 3732, rejected appellant's argument and found that the words of the section are not ambiguous. *Id.* at 1360.

112. *Id.* at 1361.

113. 349 Pa. Super. 78, 502 A.2d 1287 (1985). In *Kostra*, the appellant was convicted of homicide by vehicle, driving while under the influence, homicide by vehicle while driving under the influence, and driving at an unsafe speed. *Kostra* was charged with the aforementioned crimes when he lost control of his car injuring all his passengers, after spending the evening bar hopping. One of those injured, Russell Blackstock, eventually died. 502 A.2d at 1288.

114. *Id.*

incident.¹¹⁵ The court held that "so long as the defendant's actions are a direct and substantial factor in bringing about death, legal responsibility may be found."¹¹⁶ The court further held that "a defendant cannot escape liability for homicide if his actions begin an unbroken chain of causation which leads to his death."¹¹⁷ Applying that rationale the court found that *Kostr*a was indeed the legal cause of decedent's death in light of the fact that his drunken driving and eventual crash set in motion the chain of events leading to the victim's demise.¹¹⁸

*Commonwealth v. Lenhart*¹¹⁹ was the next appellate case, and the first Supreme Court case, to examine the causation issue. Justice Flaherty, after examining the relevant language of section 3735, held that it "is clear that the DUI violation must be the cause of death in order to sustain a conviction" under the statute.¹²⁰ An examination of *Kostr*a and *Dixon* in light of *Lenhart* is helpful in determining what standard of causation one must prove to establish a conviction under 3735. The language of section 3735 clearly requires that the DUI violation be the direct cause of death.¹²¹ The *Dixon* Court interpreted this language to require that death be "a probable consequence of the conduct," with the DUI violation being the conduct in question.¹²² The *Kostr*a court held that the defendant's actions (the DUI violation) are the legal cause of death if they start an unbroken chain of causation which leads to death.¹²³ Reading all three cases together, in light of the statutory language, it seems clear that the DUI violation is a direct and substantial factor in bringing about decedent's death if the violation starts an unbroken chain of events and death was a probable consequence of those events. With this reading in mind, the Supreme Court in *Lenhart* was justified in vacating the homicide by vehicle, while DUI conviction in favor of the appellant, *Lenhart*.¹²⁴ The Commonwealth failed to prove through accident reconstruction or other forms of proof that *Lenhart*'s DUI violation

115. *Id.* at 1289.

116. *Id.*

117. *Id.*

118. *Id.*

119. 553 A.2d 909 (1989).

120. *Id.* at 911. See *supra* note 26.

121. 75 PA. CONS. STAT. ANN. § 3735 (Purdon Supp. 1989) See *supra* note 10 for the relevant language.

122. 498 A.2d at 1361.

123. 502 A.2d at 1289.

124. 553 A.2d at 912.

started an unbroken chain of events causing the collision which resulted in Bateman's death.¹²⁵ Despite the lack of direct proof on causation, the trial court found that there was no other reasonable explanation for the accident, a clearly insufficient finding under a beyond a reasonable doubt standard.¹²⁶

By merely reiterating the statutory language of section 3735 in *Lenhart* the Supreme Court failed to provide the lower courts with a guide in interpreting the causation language. However, a synthesis of the *Lenhart*, *Kostr*a and *Dixon* cases in light of the statutory language does set forth a clear standard for the courts to use in future cases.

Christopher T. Lee

125. *Id.* at 911.

126. *Id.*