Florida Law Review

Volume 4 | Issue 3 Article 4

September 1951

Manslaughter by Automobile in Florida

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LEGISLATIVE NOTES

MANSLAUGHTER BY AUTOMOBILE IN FLORIDA

Florida Statutes §§732.07, 860.01 (1949)

Increasing use of motor vehicles and the numerous deaths resulting therefrom have resulted in a complex legal problem. The admixture of gasoline and alcohol has intensified it. The many judicial decisions in this field prompt a thorough consideration of the legal machinery by which Florida has coped with the situation.

Involuntary manslaughter was a crime at common law.[1] It is now generally defined and made punishable by statute.[2] Enactment of the Revised Statutes of Florida[3] on June 13, 1892, abolished the four statutory degrees of manslaughter[4] that had been in effect since 1868.[5] Prior to legislation in 1923[6] there was no specific Florida statute dealing with manslaughter arising from the operation of motor vehicles, and cases were prosecuted under the general manslaughter act which has existed in its present form since the revision of 1892:[7]

> "The killing of a human being by the act, procurement or culpable negligence of another, in cases where such killing shall not be justifiable or excusable homicide nor murder . . . shall be deemed manslaughter . . . ."

Manslaughter is not a degree of murder; it is a type of unlawful homicide[8] defined as felonious homicide other than murder.[9] Intent,

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[1]4 BL. COMM. *191-192.

[2]For a comprehensive compilation of involuntary manslaughter statutes see Moreland, *A Rationale of Criminal Negligence*, 32 KY. L.J. 221, 238 *et seq.* (1944).

[3]FLA. REV. STAT. §2384 (1892).

[4]Fla. Laws 1868, c. 1637, §§8-10, 11-13, 14-19, 20-21.

[5]Reynolds v. State, 33 Fla. 301, 14 So. 723 (1894); Ballard v. State, 31 Fla. 266, 12 So. 865 (1893).

[6]Fla. Laws 1923, §9269. The present Florida statute dealing specifically with manslaughter arising from the operation of motor vehicles is discussed below.

[7]FLA. REV. STAT. §2384 (1892), FLA. STAT. §782.07 (1949).

[8]Boyett v. State, 69 Fla. 648, 68 So. 931 (1915).

[9]Zow v. State, 70 Fla. 214, 70 So. 18 (1915).

however, is not an essential element of involuntary manslaughter,[10] and it has been supplanted by the statutory element of culpable negligence,[11] which Florida has incorporated into its manslaughter act,[12] as have several other states.[13] This term has been said to be undefinable,[14] and indeed the problem of its definition has been one of the most troublesome confronting the courts in the construction of statutes embodying it.

CULPABLE NEGLIGENCE UNDER THE GENERAL MANSLAUGHTER ACT

Judicial Definition. In *Cannon v. State*[15] the Florida Court adopted the common law view[16] accepted by most states having similar statutes[17] that culpable negligence must be of a higher degree than that required to establish simple negligence upon a civil issue.[18] Culpable negligence was said to be the equivalent of that degree of negligence necessary to support punitive damages in civil cases — negligence of

> "'. . . a gross and flagrant character, evincing reckless disregard of human life or of the safety of persons exposed to its dangerous effects; or that entire want of care which would raise the presumption of indifference to consequences; or which shows such

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[10]Kent v. State, 53 Fla. 51, 43 So. 773 (1907).

[11]Hulst v. State, 123 Fla. 315, 166 So. 828 (1936).

[12]FLA. STAT. §782.07 (1949).

[13]KAN. GEN. STAT. ANN. §21-407 (1949); MINN. STAT. ANN. §619.18 (Henderson 1949); MISS. CODE ANN. §2220 (1942); MO. REV. STAT. ANN. §4382 (1935); N.Y. PENAL LAW §1052; OKLA. STAT. ANN. tit. 21, §716 (1941); S.D. CODE §13.2016 (1939); WIS. STAT. §340.10 (1947); WYO. COMP. STAT. ANN. §9-205 (1945).

[14]Sims v. State, 149 Miss. 171, 115 So. 217 (1928).

[15]91 Fla. 214, 107 So. 360 (1926).

[16]State v. Custer, 129 Kan. 381, 282 Pac. 1071 (1929) (giving good review of the common law).

[17]See note 14 *supra.*

[18]*E.g.*, State v. Custer, 129 Kan. 381, 282 Pac. 1071 (1929); State v. Lester, 127 Minn. 282, 149 N. W. 297 (1914); Gregory v. State, 152 Miss. 133, 118 So. 906 (1928); State v. Millin, 318 Mo. 553, 300 S.W. 694 (1927); People v. Meyer, 239 N.Y. 608, 147 N.E. 216 (1925); Nail v. State, 33 Okla. Crim. 100, 242 Pac. 270 (1926); State v. Bates, 65 S.D. 105, 271 N.W. 765 (1937); State v. McComb, 33 Wyo. 346, 239 Pac. 526 (1925). *Contra:* Clemens v. State, 176 Wis. 289, 185 N.W. 209 (1921).

> wantonness or recklessness or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them.' "[19]

One portion of this definition indicates that the Court is not eliminating intent as an element of the crime but is merely inferring that the act carries with it a presumption of intent in respect of the probable consequences of this volitional conduct. This view accords with the accepted premise that a crime must have the elements of both act and intent. The definition as adopted in the *Cannon* case has been followed,[20] with some slight deviation,[21] up to the present time.

In two subsequent cases the Court purported to apply a definition[22] which is no more stringent than that applied in tort cases to ordinary negligence.[23] In the later of the two cases,[24] however, it was reiterated that the Court was committed to the rule laid down in the *Cannon* case that the degree of negligence required to sustain imprisonment should be at least as high as that required for the imposition of punitive damages in a civil action.

In *Franklin v. State*[25] the Court reviewed an alleged error of the trial court which defined culpable negligence in its instruction to the jury as

> "'. . . the omission to do something which a reasonable and prudent and cautious man would do, or the doing of something

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[19]Cannon v. State, 91 Fla. 214, 221, 107 So. 360, 363 (1926).

[20]*E.g.*, LaViolette v. State, 159 Fla. 764, 33 So.2d 851 (1947); Walter v. State, 157 Fla. 684, 26 So.2d 821 (1946); Savage v. State, 152 Fla. 307, 11 So.2d 778 (1943); Russ v. State, 140 Fla. 217, 191 So. 296 (1939); Pitts v. State, 132 Fla. 812, 182 So. 234 (1938); Franklin v. State, 120 Fla. 686, 163 So. 55 (1935).

[21]Russ v. State, 140 Fla. 217, 191 So. 296 (1939); Austin v. State, 101 Fla. 990, 132 So. 491 (1931).

[22]"Culpable negligence is the omission to do something which a reasonable, prudent and cautious man would do, or the doing of something which such a man would not do under the circumstances surrounding the particular case," Russ v. State, 140 Fla. 217, 219, 191 So. 296, 298 (1939); *accord*, Austin v. State, 101 Fla. 990, 994, 132 So. 491, 493 (1931).

[23]*E.g.*, Birmingham v. Latham, 230 Ala. 601, 162 So. 675 (1935); Swilley v. Economy Cab Co., 46 So.2d 173 (Fla. 1950).

[24]Russ v. State, 140 Fla. 217, 191 So. 296 (1939).

[25]120 Fla. 686, 163 So. 55 (1935).

which such a man would not do under the circumstances surrounding the particular case.' "[26]

It was held, however, that although the charge was not as full and complete as that adopted in the *Cannon* case it was not such an error in instruction as to be ground for reversal when the evidence left no room for reasonable doubt of the defendant's guilt. It is undoubtedly within the province of the appellate court to consider the sufficiency of the evidence under a proper instruction. But whether the jury would have found the evidence sufficient had the charge been correct is not a question of law for the court but one of fact for the jury. Indeed, this appears to be an unjustifiable usurpation of the jury function in a situation in which error is patent. Gross negligence and culpable negligence are not necessarily synonymous, though they certainly overlap.[27] Of course definitions alone are generally meaningless; it is only when they are applied to specific factual situations that they become significant.

Application. From the basic situation in which the negligent operation of a motor vehicle[28] has caused the death of another person,[29] there arise many varied and complex fact patterns into which the judicial definition must be fitted if it is to be applied successfully. Culpable negligence has been found in the operation of a vehicle at an excessive rate of speed and without regard for other vehicles or people.[30] Excessive speed, however, or violation of ordinances regu-

[26]*Id.* at 689, 163 So. at 56.

[27]Franklin v. State, 120 Fla. 686, 689, 163 So. 55 (1935).

[28]*E.g.*, Mongeon v. State, 147 Fla. 661, 3 So.2d 371 (1941) (truck); Everett v. State, 140 Fla. 737, 192 So. 199 (1939) (ambulance); Roland v. State, 140 Fla. 692, 192 So. 602 (1939) (automobile).

[29]*E.g.*, McHugh v. State, 160 Fla. 823, 36 So.2d 786 (1948) (motor-scooter); Hyman v. State, 152 Fla. 446, 12 So.2d 437 (1943) (motorcycle); Mongeon v. State, 147 Fla. 661, 3 So.2d 371 (1941) (occupant of driver's vehicle); Ates v. State, 141 Fla. 502, 194 So. 286 (1940) (bicycle); Blakes v. State, 133 Fla. 12, 182 So. 447 (1938) (pedestrian); Bannerman v. State, 125 Fla. 459, 170 So. 127 (1936) (occupant of another automobile); Hulst v. State, 123 Fla. 315, 166 So. 828 (1936) (children walking alongside street); Diehl v. State, 117 Fla. 816, 158 So. 504 (1935) (children playing near street).

[30]*E.g.*, Patterson v. State, 128 Fla. 539, 175 So. 730 (1937); Sallas v. State, 98 Fla. 464, 124 So. 27 (1929) (public beach); Denmark v. State, 88 Fla. 244, 102 So. 246 (1924) (highway); Hobbs v. State, 83 Fla. 480, 91 So. 555 (1922) (on a street).

lating speed, has not been a governing element in the cases, and certainly the state is not bound to confine its proof of culpable negligence to this particular factor.[31] Nowhere does the Court rely on speed or statutory violations as creating a presumption of culpable negligence. Instead the more just method has been followed of giving weight to every element of the situation to determine if the conduct has been such as should be held criminal negligence. The burden is on the state to prove culpable negligence; and when there is no showing as to the cause of a fatal collision a conviction will be reversed.[32]

Culpable negligence has been found in the absence of excessive speed when the defendant was driving at night in a dense fog[33] or while in a state of stupor caused by voluntary abstinence from sleep.[34] Conduct which contributes toward a finding of culpable negligence is exemplified in running a red light,[35] driving down the middle of the highway[36] or on the left side,[37] or turning to the left in the path of an oncoming motorcycle.[38] Convictions have been upheld in some instances even though the driver wrecked his car in attempting to avoid the accident[39] or sounded his horn in warning which the deceased did not hear because of deafness.[40] The only explanation for this is that the belated attempt to avoid collision does not mitigate the driver's original culpability, which remains the proximate cause of the death.

Convictions have been sustained in situations which hardly justify findings of culpable negligence. In one such case the deceased was walking at night along the edge of the street. The defendant was driving fifteen miles per hour; his view of the deceased was blocked

[31]Bannerman v. State, 125 Fla. 459, 170 So. 127 (1936).

[32]Hawkins v. State, 120 Fla. 905, 163 So. 133 (1935). A young Negro boy, driving slowly and carefully, collided with the car of an aged white man and was convicted of manslaughter. Justice Buford remarked that the jury must have been influenced by something other than proof of criminal negligence.

[33]Lipsey v. State, 154 Fla. 32, 16 So.2d 439 (1944).

[34]Johnson v. State, 148 Fla. 510, 4 So.2d 671 (1941).

[35]Howell v. State, 136 Fla. 582, 187 So. 163 (1939).

[36]*See* Jackson v. Edwards, 144 Fla. 187, 197, 197 So. 833, 837 (1940).

[37]Franklin v. State, 120 Fla. 686, 163 So. 55 (1935) (remanded to impose sentence in accordance with law).

[38]Hyman v. State, 152 Fla. 446, 12 So.2d 437 (1943).

[39]Sallas v. State, 98 Fla. 464, 124 So. 27 (1929).

[40]Shaw v. State, 88 Fla. 320, 102 So. 550 (1924).

by a parked car.[41] In another case the defendant was lawfully driving on a highway when a small child who had been picking flowers with her parents suddenly started from one side of the road to the other and ran into the path of the car.[42] A finding of culpable negligence was also affirmed in a case in which the defendant collided with an oncoming car which suddenly turned to the left in front of the defendant's car.[43]

Two cases with similar factual situations emphasize that an act that might be culpable if standing alone may not be when examined with regard to all the surrounding circumstances.[44] Thus, although violation of statutes may be some proof of negligence, the causal connection between the violation of the statute or ordinance and the injury or death inflicted must be established.[45] In both cases death resulted when, in violation of two statutes,[46] a truck was left partially on the highway at night without lights. In both instances no culpable negligence was found, because the drivers had left undone nothing that reasonably prudent and cautious men would have done under the circumstances and had done nothing that reasonably prudent men would not have done. The trucks were unavoidably disabled and everything possible was done to restore them to operating condition. In one case[47] the driver had stationed a boy in the road to flag rapidly approaching cars.

Evidence has been held insufficient to establish culpable negligence in a number of cases that do not easily fall under any generalization. Thus when the deceased, while crossing a highway near which she had lived for many years, was struck by a motorist driving on the proper side, the driver was absolved of blame because the deceased was aware of the heavy traffic at that point at all times, the driver had a lawful right to travel there, and the deceased when crossing the highway was charged with the duty to exercise due care.[48] In a

[41]*See* Hulst v. State, 123 Fla. 315, 319, 166 So. 828, 830 (1936).

[42]Laster v. State, 160 Fla. 153, 33 So.2d 728 (1948).

[43]Williams v. State, 147 Fla. 91, 2 So.2d 301 (1941).

[44]Thompson v. State, 108 Fla. 370, 146 So. 201 (1933); Austin v. State, 101 Fla. 990, 132 So. 491 (1931).

[45]*Ibid.*

[46]FLA. COMP. GEN. LAWS §1294 (1927) (motor vehicles to be provided with lights, etc.); §1320 (stopping car on road).

[47]Thompson v. State, 108 Fla. 370, 146 So. 201 (1933).

[48]Russ v. State, 140 Fla. 217, 191 So. 296 (1939). *But cf.* Sallas v. State, 98 Fla. 464, 124 So. 27 (1929).

situation in which the defendant was meeting two approaching cars, the second of which, in passing the first, struck defendant's car, knocking off its left front wheel and causing it to swerve into the car being passed, the Supreme Court reversed, on rehearing, a finding of culpable negligence.[49] Losing control of a car by momentarily taking one's eyes off the road, causing it to plunge into a canal alongside and resulting in the death of an occupant, has been held not to constitute culpable negligence.[50] Nor does criminal liability attach when circumstances beyond the control of the accused cause him against his will to be in a situation that results in another's death.[51]

Regardless of the apparent lack of justification of some decisions, the Florida Court has recognized that weight should be given to mitigating incidents and that the final result depends upon a careful balancing of all the circumstances of the individual case.

MANSLAUGHTER UNDER THE INTOXICATION STATUTE

Death in an accident occurring when the driver of the offending vehicle is intoxicated is apparently regarded by the Legislature as so serious that, by statute, proof of culpable negligence in such situations is unnecessary to sustain a conviction of manslaughter. The first legislative enactment concerning driving while intoxicated was passed in 1915.[52] That act made it a misdemeanor for any person to operate an automobile while intoxicated. It was amended in 1923 by providing a greater penalty for the misdemeanor if damage to property result and adding that if death result the driver shall be guilty of manslaughter.[53] The additional manslaughter provision was restricted to driving while intoxicated, while the misdemeanor portion embraced both driving while under the influence of intoxicants and while in an intoxicated condition. The statute has continued in substantially this form to the present.[54]

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[49]*See* Graives v. State, 127 Fla. 182, 188, 172 So. 716, 718 (1936). But the conviction was upheld on count under intoxication statute. The Court said if drivers of two cars were both guilty of criminal negligence causing the death of an innocent third driver, it would be no defense to either that the other contributed to causing the result.

[50]Savage v. State, 152 Fla. 367, 11 So.2d 778 (1943).

[51]Pitts v. State, 132 Fla. 812, 182 So. 234 (1938) *semble.*

[52]Fla. Laws 1915, c. 6882.

[53]Fla. Laws 1923, c. 9269.

[54]FLA. STAT. §860.01 (1949):

This statute has been held to create a separate offense, of which culpable negligence is not a specific element and need not be alleged.[55] The offense is not in driving negligently while intoxicated but in the killing of a person by driving while intoxicated.[56] A possible theory of legislative intent is that it is considered criminal negligence for a person in an intoxicated condition to attempt to drive, and if death results such initial negligence will be imputed to the act itself.[57] The Supreme Court voiced this theory in a recent decision.[58] Even though manslaughter caused by drunken driving can be prosecuted under either the general statute or the intoxication statute, the offenses are distinct and prosecution for one offense will not bar prosecution for the other.[59]

The manslaughter portion of the intoxication statute uses the words *while intoxicated* to the exclusion of the words *under the influence of intoxicants,* and it has been held that these phrases are not synonymous. Thus, a charge that the defendant was under the influence of intoxicants is insufficient to indict properly for manslaughter under the intoxication statute.[60] Although anyone intoxicated is under the in-

"It is unlawful for any person, while in an intoxicated condition or under the influence of intoxicating liquor to such extent as to deprive him of full possession of his normal faculties, to drive or operate over the highways or streets or thoroughfares of Florida, any automobile, truck . . . . Any person convicted of violation of this section shall be punished as provided by §317.20.

"If, however, damage to property or person of another, other than damage resulting in death of any person, is done by said intoxicated person under the influence of intoxicating liquor to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any of said vehicles mentioned herein, he shall upon conviction be fined not more than five hundred dollars, and also be imprisoned not less than three months nor more than twelve months, and if the death of any human being be caused by the operation of a motor vehicle by any person while intoxicated, such person shall be deemed guilty of manslaughter, and on conviction be punished as provided by existing law relating to manslaughter."

The constitutionality of this statute was upheld as against the contention that the title embraces more than one subject, Roddenberry v. State, 152 Fla. 197, 11 So.2d 582 (1942).

[55]Tootle v. State, 100 Fla. 1248, 130 So. 912 (1930).

[56]*See* Cannon v. State, 91 Fla. 214, 218, 107 So. 360, 362 (1926).

[57]*Ibid.*

[58]Roddenberry v. State, 152 Fla. 197, 11 So.2d 582 (1942).

[59]*Accord,* McHugh v. State, 160 Fla. 823, 36 So.2d 786 (1948).

[60]Cannon v. State, 91 Fla. 214, 107 So. 360 (1926). *Contra:* Whitman v. State, 97 Fla. 988, 122 So. 567 (1929).

fluence of intoxicants, the reverse is not always true. A person who has partaken of an intoxicant to any extent may be under its influence, but it is when this influence is of such a degree as to deprive him of full possession of his normal faculties that he can properly be said to be intoxicated. In one case,[61] however, a conviction under the intoxication statute was sustained although the defendant, arrested shortly after the accident, drove through the traffic of the streets of Pensacola to the jail under the direction of the arresting officer, who rode in the car with him. Justice Buford, in his dissent, thought that this fell far short of showing that he was under the influence of intoxicants to such an extent as to deprive him of full possession of his normal faculties.[62]

If the words *under the influence of intoxicants* are included in an indictment framed under the general manslaughter statute, they will be treated as surplusage.[63] Testimony as to defendant's intoxication, however, is admissible to establish culpable negligence, on the theory that ordinarily persons merely under the influence of intoxicants are more apt to be reckless and daring.[64] Intoxication is not an essential ingredient of manslaughter under the general act, but may be an element of culpable negligence.[65] The misdemeanor of driving while under the influence of intoxicants is somewhat duplicated by another statute,[66] but a conviction under it and a reckless driving statute[67] does not operate to bar subsequent prosecution under the general manslaughter statute[68] or under the manslaughter provision of the intoxication statute.[69] Furthermore, if indicted under both the general act and the intoxication statute and acquitted of culpable negligence, conviction can nevertheless be sustained under the intoxication statute.[70] The fact that all allegations essential to charge man-

[61]Ates v. State, 141 Fla. 502, 194 So. 286 (1940).

[62]*Id.* at 505, 194 So. at 287.

[63]Cannon v. State, 91 Fla. 214, 107 So. 360 (1926).

[64]*Ibid.*

[65]*See* Hobbs v. State, 83 Fla. 480, 482, 91 So. 555, 556 (1922).

[66]FLA. STAT. §317.20 (1949): "It is unlawful . . . for any person who is . . . under the influence of intoxicating liquor . . . when affected to the extent that his or her normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state."

[67]FLA. STAT. §317.21 (1949).

[68]State v. Bacom, 159 Fla. 54, 30 So.2d 744 (1947).

[69]Bacom v. State, 39 So.2d 794 (Fla. 1949).

[70]Ates v. State, 141 Fla. 502, 194 So. 286 (1940); Graives v. State, 127

slaughter under either statute are contained in one count does not make the indictment invalid for duplicity.[71] In a case in which the defendant driver killed two newsboys who were riding on a motor scooter, acquittal under the general manslaughter statute for the death of one boy did not bar a subsequent prosecution for the death of the other under the intoxication statute.[72]

CONCLUSION

The general manslaughter statute defines manslaughter only in a negative manner by pointing out what homicides are not manslaughter, and fails to include any of the elements that distinguish manslaughter from other homicides. The general terms of the statute are sufficiently broad to cover all homicides that should reasonably be included. A fairly well-settled body of law resulting from judicial interpretation is based upon the theory that manslaughter resulting from driving in a culpably negligent manner is included within the broad terms of the statute. Another separate offense exists, namely, manslaughter resulting from driving while intoxicated. The intoxication statute is a valuable adjunct to legislation dealing with manslaughter because it substitutes the factual question of whether the defendant was driving while intoxicated for the nebulous abstraction of culpable negligence. Stringent penalties are thus provided for driving while intoxicated, apparently on the theory that this will deter drunkenness on the highways. The type of statute in effect in Florida is not the only solution to the problem.[73] Only a careful study could prove whether the Florida policy actually deters driving while intoxicated to a greater degree than the rule that intoxication merely raises a presumption of culpable negligence.

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Fla. 182, 172 So. 716 (1936); Barrington v. State, 145 Fla. 61, 199 So. 320 (1940).

[71]Kay v. State, 114 Fla. 44, 153 So. 311 (1934).

[72]McHugh v. State, 160 Fla. 823, 36 So.2d 786 (1948).

[73]*E.g.*, MICH. COMP. LAWS §17115-324-5 (Mason Cum. Supp. 1940); OHIO GEN. CODE ANN. §§12404, 12404-1 (Page 1938); N.H. REV. LAWS c. 118, §12 (1942); VT. REV. STAT. §10,286 (1947). For a discussion of the law of states having statutes of this nature see Riesenfeld, *Negligent Homicide—A Study in Statutory Interpretation*, 25 CALIF. L. REV. 1 (1936); Note, 41 J. CRIM. L. & CRIMINOLOGY 183 (1950).