| Facts that were insufficient or sufficient to sustain a conviction of negligent vehicular homicide: States following Model Penal Code | | |
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| State | Conviction Reversed | Conviction Affirmed |
| ME[1] | Splashed snow onto oncoming cars instead of moving right to lane with less snow, causing police car to lose control[2] | Pilotted boat on a plane at 25 kt for 30 from a position too low to see ahead over bow of boat; ran over small boat trolling[3]<br>Logger overloaded truck beyond legal maximum height without measuring, drove on US-1. I-95 overpass knocked log through windshield of victims car[4] |
| NH[5] | Strayed over double yellow line for two seconds before colliding with oncoming motorcycle. Driver was inattentive for "only a few seconds"[6]<br>Not criminal negligence: dozing off, changing a CD or the radio, mind wanders (dicta) [7]<br>Entrusted auto to friend whom he knew to be drunk[8] | 36 ft boat traveling at 25 kt overtook, collided, and ran over smaller boat with operational running lights on a clear night.[9]<br>Speed boat ran into a group of swimmer in waist-high water near shore. |
| NY[10] | Mistakenly entered freeway via the exit ramp and exited by making a U-turn across 3 lanes of freeway traffic[11]<br>70-72 mph through a 40 mph curve warning; speed limit 55 mph, country road at night Spun out of control[12]<br>80 mph on rural road with speed limit 55 mph[13]<br>82-87 mph on 55 mph freeway during rush hour; skidded by dramatic pressing of the break[14]<br>Struck marked police car stopped in the right-hand travel lane of Interstate 87 on a rainy, foggy night[15] | 90 miles per hour in a 55 mph "radar zone," accelerated after being warned by passenger to slow down, continued past a line of cars that had been stopped by police, and struck and killed state trooper attempting to direct him off the highway[16]<br>Speeding on city street and failed to stop at red light before killing pedestrian crossing street with green light in her favor[17]<br>Drag racing on city street[18] |
| CT[19] | | Full dump truck coming to yellow traffic light, accelerates; too fast to successfully negotiate the turn after the light, turned over, and killed driver in another car. Driver had driven through the same intersections earlier that day[20]<br>Police car exceeding the speed limit ran red light, violating the statute for emergency vehicles, killing driver with right of way[21]<br>63 mph in a 25 mph zone[22]<br>While stopped at red light, victim punched driver through car window; when light turned green driver drove off, dragging victim and reaching speed of 37 mph, hit brakes, accelerated[23] |
| TN[24] | Struck victim standing next to his truck which had stalled in the travel lane without rear lights at night[25]<br>Held two-year old child on lap in front seat in spite of warning on car about risks from air bag deployment in 1998, when many parents were still unaware of the risk[26] | Ran stop sign without slowing where road crosses major 4-lane highway[27]<br>Dozed at the wheel and veered off lane before waking up 3-4 times, before finally having a head-on collision[28]<br>Arguing with fiancé while exceeding speed limit, veered across center line, returned to proper lane to avoid oncoming ca , but failed to stay right when rounding a right-curve and struck the car head-on[29] |

| | | |
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| KA[30] | Ran red light just before it turned green, and then collided with car of victim who had run a yellow light and was ¼ through intersection when light changed (to red for victim and green for defendant)[31] | Ran stop sign at a high rate of speed[32]<br>Tractor trailer driving 55 mph in a 45 mph zone ran into the rear of the paving company pickup truck with a yellow flashing light that was picking up construction cones. Passenger riding in back of the truck saw accident coming and jumped off truck[33] |
| AR[34] | | Garbage truck crossed centerline by 7 feet into 8-foot oncoming lane on a bridge for 150 feet before colliding with victim[35]<br>Crossed double-yellow line while short-cutting an S-turn, and collided head-on with victim's car, while driving almost twice the speed limit with several illegal drugs in system but possibly not intoxicated[36]<br>Crossed double yellow line on a misty day to pass logging truck that splashed water on windshield while going uphill[37] |
| OR[38] | | Fell asleep at the wheel after drinking, blood 0.01% *below* legal limit[39]<br>Swerved across center line completely into oncoming lane at least 4 times while talking to passenger over a 15-20 minute period before head-on collision[40] |

[1] From State v Crocker, 435 A. 2d 58 (Me. 1981)

> For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation. 17-A M.R.S.A. § 10(4). "The Model Penal Code Model Penal Code also helps us in interpreting our Criminal Code's definition of "criminal negligence." Our Code's section 10(4)(C) closely parallels the Model Penal Code definition of "negligence." *See* Model Penal Code (U.L.A.) § 2.02(2)(d) (1974).[6] Under section 210.4 of the Model Penal Code, to return a conviction for negligent homicide, "[t]he jury must find *fault* and find it was *substantial*; that is all . . . that can be said in legislative terms." (Emphasis added) *Id.* § 2.02, Comment at 126 (Reprint—Tent. Draft No. 4, 1955). Thus, the Model Penal Code provides for the conviction of a criminally accused who has caused a death with negligence that is different "from ordinary negligence only in degree, not in kind." State v. Bier, 591 P.2d 1115, 1118 (Mont.1979)

[2] State v. Tempesta, 617 A.2d 566 (Me. 1992) (offense was driving to endanger, whose standard is the same as negligent homicide in cases where death does not result).

[3] State v. Gorman, 648 A.2d 967 (Me. 1994). Note: The court found reckless but Maryland court would probably overrule; the case is analogous to frost-on-windshield case in St. Mary's County.

[4] State v. Ledger, 599 A.2d 813 (Me. 1991)

[5] "Under RSA 626:2, II(d), a person acts "negligently with respect to a material element of an offense when he fails to become aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct…. RSA 626:2, II(d) specifies that "[t]he risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation. State v. Shepard, 973 A. 2d 318 (N.H. 2009)

[6] *Id.*

[7] *Id.*

[8] State v. Etzweiler, 12 N.H. 57 (1984).

[9] State v. Littlefield, 152 N.H. 331(2005).

[10] "[a] person acts with criminal negligence with respect to a result ... when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." NEW YORK PENAL LAW 15.05 (4)

[11] People v. McGrantham, N.Y.3d 892 (2009)

[12] People v. Cabrera 10 N.Y.3d 370, 887 N.E.2d 1132 (2008) "the carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence, and that the carelessness must be such that its *seriousness would be apparent to anyone who shares the community's general sense of right and wrong.* Moreover, criminal negligence requires a defendant to have *engaged in some blameworthy conduct creating or contributing to a substantial and unjustifiable risk* of a proscribed result; *nonperception of a risk,* even if [the proscribed result occurs], *is not enough*" (*id.* at 872 [internal quotation marks and citations omitted; emphasis added]).

[13] People v Perry, 123 AD2d 492, 493 [4th Dept 1986], affd 70 N.Y.2d 626 (1987)

[14] People v Badke, 21 Misc.3d 471, 865 N.Y.S.2d 488 (2008)

[15] People v Boutin. 75 N.Y.2d 692 (1990)

[16] People v Paul V.S. (75 N.Y.2d 944 [1990])

[17] People v Haney, 30 N.Y.2d 328 [1972

[18] People v Soto, 44 N.Y.2d 683 [1978]; and People v Ricardo B., 73 N.Y.2d 228 [1989

[19] Sec. 53a-57. Misconduct with a motor vehicle: Class D felony. (a) A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle, he causes the death of another person. .Conn General Statutes § 53a-57.

[20] State v. Pickles, 28 Conn. App. 283 - Conn: Appellate Court 1992

[21] State v Scribner, 72 Conn. App. 736 (2002)

[22] State v Potter, 894 A.2d 1063 (2006) 95 Conn.App. 89

[23] State v. Naxarian (AC 30290) (2010) Appellate Court of Connecticut

[24]

> A person ... acts with criminal negligence with respect to the circumstances surrounding that person's conduct or the result of that conduct *when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur.* The risk must be of such a nature and degree that the *failure to perceive it constitutes a gross deviation from the standard of care* that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint.
>
> TENN.CODE ANN. § 39-11-302(d)

[25] Crawley v. State, 413 SW 2d 370 (Tenn. 1967) stated

> It is true in such cases allowance must be made for misadventure or accident, as distinguished from culpable negligence; and that, to support a conviction of crime, the accused must have been guilty of a higher and grosser degree of negligence than that which merely suffices to support a judgment in a civil case.

*Id.* (citing Roe v. State, 210 Tenn. 282, 295, 358 S.W.2d 308 (1962), and cases therein cited).

> To convict a motorist of homicide by negligence, it is, of course, not enough to prove that he was guilty merely of a want of due care, inadvertence, or inattention, but it must be shown that his negligence in driving was such that he knew or reasonably should have known that it might endanger human life, and that the death charged was the natural and probable result of such negligence.'"

Id. (quoting Roe v. State, supra, at 295. See also, Newby v. State, 215 Tenn. 609, 388 S.W.2d 136 (1965)

[26] State v. Jones, 151 SW 3d 494 - Tenn: Supreme Court 2004

[27] State v Gillon 15 S.W.3d 492 (1997).

[28] State v. William Terry Martin, No. 01C01-9602-CC-00067, 1997 WL 36803 (Tenn. Crim. App. 1997). Court found recklessness but we include it in this table because Maryland courts have not convicted of manslaughter for falling asleep at the wheel without additional evidence such as warning from passenger.

[29] State v. Ramsey, 903 SW 2d 709 (Tenn Crim.l App. 1985).

[30] "Vehicular homicide is the unintentional killing of a human being committed by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances.…`Substantial' and `material' have been construed as synonymous terms." State v. Krovvidi , 274 Kan. 1059, 58 P.3d 687 (2002).

[31] State v. Krovvidi , 274 Kan. 1059, 58 P.3d 687 (2002)

[32] State v. Boydston, 4 Kan. App.2d 540, 609 P.2d 224 (1980)

[33] State v. Trcka, 20 Kan. App.2d 84, 884 P.2d 434 (1994)

[34]

> (A) A person acts negligently with respect to attendant circumstances or a result of his or her conduct when the person should be aware of a substantial and justifiable risk that the attendant circumstances exist or the result will occur.
>
> (B) The risk must be of such a nature and degree that the actor's failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation considering the nature and purpose of the actor's conduct and the circumstances known to the actor.

State v. Krovvidi 274 Kan. 1059 (2002) 58 P.3d 687

[35] Utley v States 237 S.W.3d 27 (Ark. 2006). *But see supra note 6 and accompanying text* (following dissent in Utley)

[36] Robonson v. State, 254 S.W.3d 750 (2007)

[37] Hunter v. State, 19 S.W.3d 607 (2000)

[38] ORS 161.085 defines criminal negligence:

> Criminal negligence' or `criminally negligent,' * * * means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. …The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Id.

> Although "recklessly" and "criminal negligence" are defined differently by statute, the two standards encompass the same types of behavior formerly characterized as "gross negligence." State v. McLaughlin, supra, 42 Or. App. at 219 n. 4, 600 P.2d 474. Without a reckless mental state or a conscious indifference to the safety of others, mere inadvertence, brief inattention or error in judgment does not constitute gross negligence. Smith v. Barry, 37 Or. App. 319, 325, 587 P.2d 483 (1978).

State v. Brinager, 96 Or.App. 160, 771 P.2d 658 (Or.App. 1989) 661 (J Edmonds, concurring)

> In State v. McLaughlin, 42 Or. App. 215, 219-220, 600 P.2d 474 (1979), we held that, when the legislature enacted ORS 161.085(10), it did not intend to permit a lesser quantum of proof to go to a jury in a criminal case than would be permitted in a civil case involving gross negligence as defined by case law and ORS 30.115(2).

Id.

[39] State v. Simmins, 580 P.2d 564, 34 Or. App. 929, (2008)

[40] *State v. Brinager*, 96 Or.App.160, 771 P.2d 658 (1989)