

Garden State CLE Presents:



Vehicular Homicide Cases in Municipal Court
Ethics and Professionalism

Instructors



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Lesson Plan

Introduction

According to the United States Centers for Disease Control and Prevention (CDC), in 2019 alone, 36,096 people in the U.S. were killed in car accidents, 587 of them in New Jersey.

Additionally, more than 3,100 people were killed on New Jersey's roads between 2015 and 2019.

Drivers were involved in 1.4 million car crashes - more than 750 crashes each day - over that period, according to data collected by the New Jersey Department of Transportation.

In the absence of purposeful, knowing or reckless conduct or a strict liability offense, there is no crime associated with vehicular homicide. For this reason, vehicular homicide cases based upon mere carelessness of the operator are typically prosecuted in municipal court.

These cases implicate numerous issues related to the ethical obligations of defense counsel. The following sections will detail those issues and the professionalism that is required to properly resolve them.

Part I

Statutory Procedures

Every vehicular homicide will be thoroughly investigated by local police, state police and a dedicated unit of the county prosecutor's office. The point of the investigation is to determine:

- 1) The cause of the accident;
- 2) Whether the driving conduct of the offending driver was causally linked to the homicide;
- 3) Whether there is evidence that the offending driver operated his vehicle in a reckless manner; and
- 4) Did the reckless operation directly result in the death of a human being.

These investigations can take time and sometimes require forensic evidence (e.g., crime scene analysis, blood and urine samples, digitally stored data from the involved vehicles, cell phones, etc.). Depending upon the available evidence, the defendant may be arrested quickly following the accident or a short time thereafter and be charged with some type of homicide crime. Typically, the defendant will also be charged with traffic offenses under Title 39 such as reckless driving (N.J.S.A. 39:4-96, careless driving N.J.S.A. 39:4-97, speeding (N.J.S.A. 39:4-98) or other infractions.

If everything works properly, the following things should occur:

- 1) First appearance - Following his arrest and release from custody, the defendant will have a first appearance in the local municipal court for an arraignment and advisement of constitutional rights.
- 2) Notification to the judge - The municipal prosecutor has the responsibility for informing the judge that the case involves a homicide.

N.J.S.A. 39:5-51 provides:

In a municipal court case which involves a violation of the motor vehicle and traffic laws as set forth in Title 39 of the Revised Statutes or in any other case which involves directly or indirectly a motor vehicle accident, the municipal prosecutor shall inform the municipal court judge in writing during the initial appearance of a defendant before the court of the death of any person or the extent of any personal injury sustained by a person as a result of the violation of the motor vehicle or traffic laws by the defendant or as a result of a motor vehicle accident which occurred during the violation of any other law by the defendant.

3) Contents of traffic complaint - In addition to the prosecutor's formal notification, the bottom of each of the traffic tickets should be marked by the issuing police officer to reflect that the accident involved a death or serious bodily injury.

4) Subject-matter jurisdiction of the municipal court - Apart from conducting an arraignment, the municipal court is divested of jurisdiction to take any further action on the case if it involved either a death or serious bodily injury.

N.J.S.A. 2B:12-17.2 provides:

In any matter concerning Title 39 of the Revised Statutes where death or serious bodily injury has occurred, regardless of whether the death or serious bodily injury is an element of the offense or violation, the Superior Court shall have exclusive jurisdiction over the offense or violation until such time that the Superior Court transfers the matter to the municipal court. For the purposes of this section, the term "serious bodily injury" shall have the meaning set forth in subsection b. of N.J.S.A. 2C:11-1.

Note that until subject-matter jurisdiction has been vested in the municipal court by the Superior Court, any municipal court adjudication would be void *ab initio*.

This statute was enacted in response to the Supreme Court's decision in In re Seelig, 180 N.J. 234(2004).

5) Victims' right notification (non-DWI) - The police or prosecutor should provide the names and addresses of victims and witnesses to the municipal court administrator so that the information can be included in the ATS system. In a homicide case, "victim" means, unless otherwise indicated, a person who suffers death, or any personal, physical, or psychological injury as a result of a motor vehicle accident. In the case of death, "victim" means a surviving spouse, child, or the next of kin. N.J.S.A. 39:5-52.

6) Victims' right notification (DWI cases) - The police or prosecutor should provide the names and addresses of victims and witnesses to the municipal court administrator so that the information can be included in the ATS system. In a DWI homicide case, Article I, paragraph 22 of the New Jersey Constitution of 1947 provides that a crime victim includes a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and also includes the spouse, parent, legal guardian, grandparent, child, or sibling of the decedent in the case of a criminal homicide. This same definition appears in the New Jersey Drunk Driver Victims' Bill of Rights (N.J.S.A. 39:4-50.9 thru 11).

Under N.J.S.A. 39:4-50.11, these include the rights to:

- a) Make statements to law enforcement officers regarding the facts of the motor vehicle accident and to reasonable use of a telephone;
- b) Receive medical assistance for injuries resulting from the accident;
- c) Contact the investigating officer and see copies of the accident reports and, in the case of a surviving spouse, child or next of kin, the autopsy reports;
- d) Be provided by the court adjudicating the offense, upon the request of the victim in writing, with:

- 1) Information about their role in the court process;
 - 2) Timely advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;
 - 3) Timely notification of the case disposition, including the trial and sentencing;
 - 4) Prompt notification of any decision or action in the case which results in the defendant's provisional or final release from custody; and
 - 5) Information about the status of the case at any time from the commission of the offense to final disposition or release of the defendant;
- e) Receive, when requested from any law enforcement agency involved with the offense, assistance in obtaining employer cooperation in minimizing loss of pay and other benefits resulting from their participation in the court process;
- f) A secure waiting area, after the motor vehicle accident, during investigations, and prior to a court appearance;
- g) Submit to the court adjudicating the offense a written or oral statement to be considered in deciding upon sentencing and probation terms. This statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the effect of the offense upon the victim's family. When a need is demonstrated, the information in this section shall be provided in the Spanish as well as the English language.

Part II

The Role of Defense Counsel

Note that New Jersey statutory law does not place any responsibility upon defense counsel. However, when the system breaks down and proper procedures are not followed, a variety of serious ethical and professionalism issues suddenly confront defense counsel, including the following:

1) Does the defense attorney have an affirmative obligation to inform the judge and prosecutor of the fact the case involved a vehicular homicide by the defendant? This question implicates the tension between N.J.R.E. 504 and R.P.C. 3.3(a)(5). N.J.R.E. 504 provides that, “communications between a lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (a) to refuse to disclose any such communication, and (b) to prevent his lawyer from disclosing it, and (c) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (i) in the course of its transmittal between the client and the lawyer, or (ii) in a manner not reasonably to be anticipated, or (iii) as a result of a breach of the lawyer-client relationship, or (iv) in the course of a recognized confidential or privileged communication between the client and such witness. By contrast, R.P.C. 3.3(a)(5) mandates that a lawyer shall not knowingly fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

2) Ethical Issues - This issue was discussed at length in Seelig, but the narrow issue of privilege was not decided. No harm will result if the municipal court has no jurisdiction under N.J.S.A. 39:12-17.2. However, when the judge is unaware there is a related homicide, defense counsel would be perpetrating a fraud on the court and wasting judicial resources by putting through a plea to a traffic offense over which the court has no jurisdiction. Moreover, the judge would need to give the victims an opportunity to speak with the prosecutor and address the court before a plea and sentence agreement could be deemed to be in the interests of justice. Moreover, under Rule 7:6-2(d)(5), when a plea agreement is reached, its terms and the

factual basis that supports the charge(s) shall be fully set forth on the record personally by the prosecutor. If the judge determines that the interests of justice would not be served by accepting the agreement, the judge shall so indicate, and the defendant shall be informed of the right to withdraw the plea if already entered. Thus, by these standards, even though a homicide is not an element of careless driving under N.J.S.A. 39:4-97, not revealing the fact of a homicide could trigger R.P.C. 8.4 in that it implicates conduct involving dishonesty, fraud, deceit or misrepresentation and is prejudicial to the administration of justice.

3) Professionalism Issues - One way of handling these issues is to explain to the client that the best course is to contact the judge and prosecutor well in advance of the court date and inform them of the homicide. This will place each of them on notice that this is a serious case that requires attention to the victims. In cases where the matter will remain in municipal court due to a lack of evidence of recklessness, the court should also be made aware of the legal issues related to an objection to a civil reservation by the victims (See Maida vs. Kuskin, 221 N.J. 112(2015) and the sentencing issues associated with a plea to careless driving in vehicular homicide cases. (See State vs. Palma, 219 N.J. 584(2014) dealing with sentencing issues related to careless driving convictions which involving a fatality.)

Part III

The Role of Municipal Prosecutor

As with any trial attorney, a municipal prosecutor has the duty to adequately prepare for trial. He or she must select the State's witnesses and prepare to present the State's evidence in court. Because the State of New Jersey is the municipal prosecutor's client, failure to discharge the obligations of office is a violation of the prosecutor's professional responsibility to represent his or her client diligently. Such a failure may constitute a violation of R.P.C. 1.1(a) (gross negligence) or R.P.C. 1.3 (Diligence and promptness). Given the importance of cases involving homicides, municipal prosecutors must devote the time and resources necessary to protect the rights of victims and to adequately prepare to present a convincing case at trial based upon the available evidence. Prosecutors must also involve the victims in the plea-bargaining discussions and advise them of the right to appeal an adverse ruling by the court on a civil reservation. (See Rule 3:23-2: A person aggrieved by a judgment of conviction may appeal the ruling of the municipal court.) The Supreme Court has reprimanded prosecutors who have failed to properly prepare in a municipal court homicide case. See In re Segal, 130 N.J. 468(1992) (Reprimand).