



Garden State CLE
 2000 Hamilton Avenue
 Hamilton, New Jersey 08619
 (609) 584-1922 – Phone
 (609) 584-1920 - Fax
 GardenStateCLE2@gmail.com

OFFICE USE ONLY

Show ID: _____
 Credits: _____
 PA: _____
 Type: _____

Video Course Evaluation Form

Name: _____ PA ID (If applicable): _____

Course Name: _____

Street address: _____

City: _____ State: _____ Zip Code: _____

Email Address: _____

Please Circle the Appropriate Answer

Instructors: Poor Satisfactory Good Excellent

Materials: Poor Satisfactory Good Excellent

CLE Rating: Poor Satisfactory Good Excellent

Required: Secret words that appeared on the screen during the seminar.

1) _____ 2) _____

3) _____ 4) _____

What did you like most about the seminar?

What criticisms, if any, do you have?

I certify that I watched, in its entirety, the above-listed CLE Course.

Signature _____ Date _____

Garden State CLE Presents:



Death by Auto **Prosecution & Defense**

Instructors



**Joseph P. Rem, Jr.,
Certified Criminal
Trial Attorney**

**Robert Ramsey,
Author**

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.

The CDC also has calculated that car crashes are the leading cause of death in the U.S. for people under the age of 55 and are among the top causes of death overall.

When fatal accidents occur, it is the job of police investigating agencies, county prosecutors, defense attorneys and the courts to seek justice for everyone involved. The information in this CLE will detail the practical aspects about how these cases are prosecuted and defended within the context of New Jersey statutory law.

Part I

Common Elements in Every Vehicular Homicide Case

a) Death of a human being – As a starting point, through the case law, New Jersey has adopted the Uniform Definition of Death Act. Strachan vs. John F. Kennedy Memorial Hospital, 109 N.J. 523, 533(1988). Under the Act, death is defined as follows:

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

The Code does not contain a statutory definition of a human being, although the case law has excluded from the definition a fetus *in utero*.¹

¹State in Interest of A. W. S., 182 N.J.Super 334, 440 A.2d 1174(Juv.&Dom.Rel.Ct. 1980), judgment aff'd, 182 N.J.Super 278, 440 A.2d 1144(App.Div.1981).

b) Culpability – N.J.S.A. 2C:11-2 provides as follows:

A person is guilty of criminal homicide if he purposely, knowingly, recklessly or, under the circumstances set forth in N.J.S.2C:11-5 or section 1 of P.L.2017, c. 165 (C. 2C:11-5.3), causes the death of another human being.

Criminal homicide is murder, manslaughter or death by auto or vessel.

A vehicular homicide that is committed either purposefully or knowingly constitutes murder. N.J.S.A. 2C:11-3(a). The felony murder rule is triggered as a result of a death that occurs during a carjacking. N.J.S.A. 2C:11-3a(3).

Apart from strict liability crimes, in most vehicular homicide cases, the prosecution must prove that the defendant caused the death of a human being with some degree of recklessness.

i) Ordinary recklessness is defined under N.J.S.A. 2C:2-2(b)(3) as follows:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Recklessness," "with recklessness" or equivalent terms have the same meaning.

ii) Some vehicular homicide prosecutions require that the recklessness element be enhanced in that the defendant engaged in conduct that manifested an extreme indifference to human life. The difference between these two standards is critical. By way of example, the Legislature intended that the degree of risk in reckless manslaughter be a mere possibility of death. In aggravated manslaughter, however, the additional element is that death be caused “under circumstances manifesting extreme indifference to human life” which elevates the risk level from a mere possibility to a probability. (State vs. Curtis, 195 N.J. Super 354, 364(App.Div.1984)).

iii) As will be seen in the following sections, vehicular homicide is sometimes considered to be a strict liability offense wherein there is no culpability state needs to be proved.

iv) Note that vehicular homicide that has been committed by virtue of negligent conduct does not constitute a violation of New Jersey’s criminal statutes. Rather, these homicides case are often handled in municipal court as traffic offenses involving N.J.S.A. 39:4-97. (See State vs. Palma, 219 N.J. 584 (2014) dealing with sentencing issues related to careless driving convictions which involving a fatality.)

c) Causation – In order to be subject to criminal liability, the prosecution in a vehicular homicide case must be able to prove beyond a reasonable doubt that the death of the victim was caused by the reckless operation of a motor vehicle. This requirement is defined under N.J.S.A. 2C:2-3 as follows:

a. Conduct is the cause of a result when:

(1) It is an antecedent but for which the result in question would not have occurred; and

(2) The relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

c. When the offense requires that the defendant recklessly or criminally negligently cause a particular result, the actual result must be within the risk of which the actor is aware or, in the case of criminal negligence, of which he should be aware, or, if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

d) Motor Vehicle – A motor vehicle is defined under NJSA 39:1-1 as follows:

“Motor vehicle” includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks, low-speed electric bicycles, low-speed electric scooters, and motorized bicycles.

e) Municipal Court Jurisdiction – Under N.J.S.A. 2B:12-17.2 - 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. This statute was enacted in response to the Supreme Court’s decision in In re Seelig, 180 N.J. 234(2004).

Part II

Statutory Offenses

1) Vehicular Homicide – N.J.S.A. 2C:11-5

a) Elements of offense—A defendant is guilty of the crime of reckless vehicular homicide when he causes the death of another person by driving a motor vehicle or a vessel recklessly. The elements of this offense require some measure of discussion and review.

- The death of the victim must have been caused by the reckless operation of the vehicle by the defendant and not some other intervening or extraneous cause.
- Recklessness can be proved either by direct or circumstantial evidence tending to show that the driver operated a motor vehicle in a manner that raised the possible risk of causing death. In the context of reckless vehicular homicide, recklessness can be thought of as a conscious disregard of a substantial and unjustifiable risk that a death will result from the actor's driving conduct. The risk of death must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, the disregard of the risk of death involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Methods of proving recklessness may be accomplished by resort to certain permissive statutory inferences that the jury may adopt or reject. These include:

- Proof that the defendant fell asleep while driving or was driving after having been without sleep for a period in excess of 24 consecutive hours.
- Proof that the defendant was driving while intoxicated in violation of N.J.S.A. 39:4-50. Typically, this requires proof of the defendant's blood-alcohol level at the time of the fatal accident. In the absence of recklessness, a defendant who was intoxicated and caused the death of another person is guilty of a third degree, strict liability crime under N.J.S.A. 2C:11-5.3.
- Proof that the defendant was operating a hand-held wireless telephone while driving a motor vehicle.
- Proof that the defendant failed to maintain a lane in violation of N.J.S.A. 39:4-88 may give rise to an inference that the defendant was driving recklessly. This particular element can reduce reckless homicide to a crime of the third degree.

b) Grading and sentencing—In general, reckless homicide is a crime of the second degree, subjecting the defendant to a sentence range of 5 to 10 years in prison and a fine up to 150,000. Convicted offenders are also subject to an 85% period of parole ineligibility on their base prison term as a result of the “No Early Release Act.”

Reckless homicide can be elevated to a crime of the first degree if the defendant operates his motor vehicle while intoxicated and recklessly kills another person while in a school zone. For purposes of this statute, a school zone includes the following areas:

- (1) Any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board, or within 1,000 feet of such school property;
- (2) A school crossing as defined in N.J.S.A. 39:1-1 if the municipality, by ordinance or resolution, has designated the school crossing as such; or
- (3) A school crossing as defined in N.J.S.A. 39:1-1 knowing that juveniles are present if the municipality has not designated the school crossing as such by ordinance or resolution.

A reckless homicide committed by an intoxicated driver within a school zone will trigger a prison term ranging from 10 to 20 years with a mandatory 85% parole ineligibility. The defendant may also be fined as much as \$200,000. The questions of whether the accident occurred within a school zone and the defendant's intoxication are no longer sentencing issues but must be decided by the jury in order to elevate this crime to the first degree.

Finally, reckless vehicular homicide is a crime of the third degree if the evidence demonstrates that the defendant did not commit any conduct constituting driving a vehicle or vessel recklessly other than failing to maintain a lane in violation of R.S. 39:4-88. A crime of the third degree carries a sentence ranging from 3 to 5 years along with an 85% parole ineligibility period. The defendant may also be fined as much as \$15,000.

c) Consecutive terms in cases of multiple victims - It is not unusual for accidents involving the reckless operation of a motor vehicle to result in more than one fatality. Moreover, the injuries sustained by additional victims who survive the fatal accident may be the subject of a simultaneous prosecution for aggravated assault or assault by auto. Upon conviction for the homicide and related offenses for other victims, after evaluating the various, relevant aggravating and mitigating evidence, a court may impose multiple terms of incarceration in cases where there are multiple victims and run the sentences consecutively.

d) Companion motor vehicle tickets - Any motor vehicle tickets that are related to the reckless vehicular homicide charge, such as reckless driving (N.J.S.A. 39:4-96) or driving while intoxicated (N.J.S.A. 39:4-50(a)) are not tried by the jury, but by the Superior Court judge during the homicide trial. The trial judge will decide on the guilt or innocence of the defendant on the tickets and impose sentence. Often, the motor vehicle infractions such as reckless driving or drunk driving will merge by operation of law into a conviction for reckless homicide. However, despite the merger, the penalties associated with the tickets survive and the merger and must be imposed.

2) Strict Liability Vehicular Homicide – N.J.S.A. 2C:11-5.3

a) In general - The Legislature has addressed the occurrence of fatal accidents where the operation of a motor vehicle results in the death of another person without regard to any degree of recklessness. Such conduct constitutes a violation of N.J.S.A. 2C:11-5.3.

b) Elements of offense - This crime is a strict liability offense. Apart from intoxicated operation of a motor vehicle, the defendant need not demonstrate any level of dangerous, negligent or any degree of reckless driving. The intoxicated operation of the vehicle and a resulting death are the only necessary elements.

The usual relationship between conduct and a result (in this instance, a death) does not apply to prosecutions for this crime. By statute, the operation of a motor vehicle while intoxicated is the cause of death when:

- (1) The operation of the motor vehicle or vessel is an antecedent but for which the death would not have occurred; and
- (2) The death was not:
 - (a) Too remote in its occurrence as to have a just bearing on the defendant's liability; or
 - Too dependent upon the conduct of another person which was unrelated to the defendant's operation of a motor vehicle or vessel as to have a just bearing on the defendant's liability.

According to N.J.S.A. 2C:11-5.3d, it is not a defense to a prosecution under this section that the decedent contributed to his own death by reckless or negligent conduct or operation of a motor vehicle or vessel.

Many cases involving fatalities associated with drunk driving are caused by the inability of the defendant to properly control his vehicle. These cases often have victims who are passengers in the defendant's vehicle, pedestrians, or occupants of other motor vehicles. However, it would appear from the statute that a jury could acquit an intoxicated defendant who was stopped at a traffic light and was struck in the rear at a high rate of speed by another intoxicated driver, resulting in the death of the defendant's passenger. A jury may decide that such a fact pattern was too dependent upon the conduct of another person which was unrelated to the defendant's intoxicated operation of a motor vehicle to have a just bearing on the defendant's guilt.

c) Grading and sentencing - A conviction under N.J.S.A. 2C:11-5.3 is a crime of the third degree. This exposes the defendant at sentencing to a jail term ranging from 3 to 5 years and/or a fine of \$15,000. The Legislature has eliminated the normal presumption against incarceration for first offenders charged with a third-degree crime for this offense. This means that there is no presumption at sentencing either for or against a custodial sentence. That decision will have to be made by the sentencing judge by weighing the statutory aggravating and mitigating factors set forth under N.J.S.A. 2C:44-1a and b.

Finally, a conviction for this crime does not mandate a period of parole ineligibility pursuant to the “No Early Release Act.”

d) Companion motor vehicle tickets - Any motor vehicle tickets that are related to the strict liability vehicular homicide charge, such as driving while intoxicated, contrary to N.J.S.A. 39:4-50(a), are not tried by the jury, but by the Superior Court judge during the homicide trial.

3) Vehicular Homicide – Aggravated Manslaughter – N.J.S.A. 2C:11-4

a) In general - When the driver of a motor vehicle operates it in an extremely reckless manner which causes the death of another person, he is guilty of the crime of aggravated manslaughter.

b) Elements of offense - The difference between aggravated manslaughter and reckless vehicular homicide is the degree of recklessness in the driving.

Although the recklessness in both crimes requires proof of a gross deviation from the standard of conduct that a reasonable person would have observed in the driver's situation, vehicular homicide under N.J.S.A. 2C:11-5 must involve driving that demonstrates a conscious disregard of a substantial and unjustifiable risk that a death will result from the driving.

By contrast, aggravated manslaughter requires that the driver recklessly cause death under circumstances manifesting extreme indifference to human life. Stated differently, reckless vehicular homicide requires that the driving implicated only the mere possibility of death, while aggravated manslaughter requires a probability of death. A defendant may be prosecuted for either or both of these crimes.

To illustrate this point, consider the following: Intoxicated driving may constitute powerful proof of recklessness to a jury. However, there is a huge difference between the reckless driver with a blood alcohol level of 0.08 % and one with a level of 0.29%. The high degree of intoxication in the case of the 0.29% driver is strong evidence of reckless conduct that manifests an extreme indifference to human life. A defendant's intoxication is a factor to be considered by a jury in determining whether a defendant is guilty of death by auto. In short, it is for the jury to decide whether a defendant's intoxication constitutes a separate reckless act to warrant a manslaughter conviction; sometimes it will be enough by itself and sometimes it will not. Other examples include rates of vehicle speed given the attendant traffic conditions, weather, lack of a driver's license, presence of pedestrians, ignoring traffic control devices, or the condition of the vehicle.

Finally, the prosecution must prove beyond a reasonable doubt that the death of the victim was caused by the defendant's reckless operation of a motor vehicle under circumstances manifesting extreme indifference to human life.

Essentially, the State must prove at least one of two forms of causation:

- (1) The victim's death must be within the risk of which the actor is aware; or
- (2) “if not, the actual result must involve the same kind of injury or harm as the probable result.” That is to say, the State must also show that the victim's death ... must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense. When the death occurs in the same manner and is of the same character as the ... [risked] result, the causation element is satisfied.¹ When it was not the same, the jury must consider if there were supervening causes for the death.

b) Strict liability – N.J.S.A. 2C:11-4a(2) - When the driver of a motor vehicle causes the death of another person while fleeing or attempting to elude a law enforcement officer in violation of N.J.S.A. 2C:29-2b, he becomes be strictly liable for aggravated manslaughter when the eluding results in the death of another.

c) Sentencing - Aggravated manslaughter is a first degree plus crime. It carries a sentence range of 10 to 30 years. Sentences imposed for aggravated manslaughter also require an 85% parole ineligibility term under the “No Early Release Act.” Finally, in cases where there are multiple convictions which are companion to the aggravated manslaughter count in the indictment, or multiple homicide victims, the court may impose consecutive sentences.

4) Vehicular Homicide – Strict Liability for driving on the revoked list or while unlicensed - Aggravated Manslaughter – N.J.S.A. 2C:40-22

a) In general - New Jersey law imposes strict liability upon the operator of a motor vehicle who, while revoked or unlicensed, becomes involved in an accident resulting in the death or serious bodily injury of another person.

b) Elements of offense - Under N.J.S.A. 2C:40-22, the motor vehicle operators who become defendants fall into two distinct categories. The first includes those whose privileges have been suspended or revoked in New Jersey or any other jurisdiction under American sovereignty. The second category includes operators who have never been licensed to drive in any American state or territory, or in any foreign jurisdiction.

When these operators become involved in a motor vehicle accident that results in the death of another person, they become strictly liable for a crime of the third degree. If the accident results in serious bodily injury to another person, as defined by N.J.S.A. 2C:11-1b, the operator will be strictly liable for a crime of the fourth degree.

c) Strict liability - The provisions of N.J.S.A. 2C:2-3 governing the causal relationship between conduct and result does not apply in a prosecution under N.J.S.A. 2C:40-22. For purposes of this crime, the defendant's mere act of operating a motor vehicle while on the revoked list or without ever having been licensed is the cause of death or serious bodily injury when:

- (1) The operation of the motor vehicle is an antecedent but for which the death or injury would not have occurred; and
- (2) The death or serious bodily injury was not:
 - (a) Too remote in its occurrence as to have a just bearing on the defendant's liability; or
 - (b) Too dependent upon the conduct of another person which was unrelated to the defendant's operation of a motor vehicle as to have a just bearing on the defendant's liability.

It is not a defense to a N.J.S.A. 2C:40-22 prosecution that the victim contributed to his own death or serious bodily injury by reckless or negligent conduct or operation of the motor vehicle he was driving at the time of the accident.

d) Grading and sentencing - An accident resulting in the death of another person under N.J.S.A. 2C:40-22 is a crime of the third degree, exposing the defendant to a jail term ranging from 3 to 5 years. Cases where the victim suffers serious bodily injury are graded as crimes of the fourth degree, which carry a jail term for as long as 18 months. Upon conviction, the operator will also be subject to the fines, jail term and license suspension associated with N.J.S.A. 39:3-40. In addition to those penalties, the defendant's driver's license or reciprocity privilege must be suspended for an additional period of one year, in addition to any suspension imposed under N.J.S.A. 39:3-40. This suspension must be served consecutively to any existing suspension. If the defendant did not have a driver's license at the time the motor vehicle accident occurred, he will be disqualified from obtaining a driver's license in this State for a period of one year. This disqualification status also places the person on the revoked list. The additional period of suspension or license disqualification begins upon the completion of any term of imprisonment.