

Criminal Negligence

Author : Jessica Smith

Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [criminal negligence](#), [mens rea](#), [negligence](#)

Date : November 18, 2010

Criminal negligence (sometimes called culpable negligence) means recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others. *State v. Jones*, 353 N.C. 159 (2000); *State v. Early*, 232 N.C. 717, 720 (1950). The showing required to establish criminal negligence is less than the level of recklessness required to show malice for purposes of second-degree murder. *State v. Mack*, ___ N.C. App. ___, 697 S.E.2d 490, 494 (2010) (comparing culpable negligence to malice and concluding that for purposes of second-degree murder, the conduct must be done recklessly or wantonly as to manifest depravity of mind and disregard of human life). It is, however, more than the deviation from reasonable conduct required for civil tort liability. *State v. Everhart*, 291 N.C. 700, 702 (1977); *State v. McAdams*, 51 N.C. App. 140 (1981).

Examples of cases in which the evidence was sufficient to establish culpable negligence include:

- A juvenile failed to render aid with due caution to a victim who became sick after ingesting a drug provided by the juvenile and after the juvenile undertook some efforts to provide help. In *Re Z.A.K.*, 189 N.C. App. 354, 359-60 (2008).
- When the defendant attempted to remove a bullet from a gun he was unloading, the gun went off, fatally shooting another person in the room. *State v. Replogle*, 181 N.C. App. 579 (2007); *see also McAdams*, 51 N.C. App. at 142 (with a loaded rifle pointing at his wife, the defendant attempted to force the rifle's bolt forward by slamming it, causing the weapon to fire, killing the wife).
- After being ordered by an officer to exit his truck, the defendant continued driving while the officer held on to the truck door; the defendant hit the officer, attempting to knock him off the truck and the officer ultimately was struck by the truck. *State v. Spellman*, 167 N.C. App. 374 (2004); *see also State v. Kaley*, 343 N.C. 107, 110 (1997) (culpable negligence occurred when an accomplice drove a vehicle while the victim was outside the car but being held by the defendant, a front seat passenger).
- The defendant attempted to knock a loaded and "cocked" gun from another's hand and scuffled for control of the gun, at which time the gun went off, killing the other person. *State v. Reynolds*, 160 N.C. App. 579 (2003).

In contrast to these cases are others in which the evidence was insufficient to establish culpable negligence. *See, e.g., Everhart*, 291 N.C. 700 (no evidence of culpable negligence when the defendant, a young girl with a 72 I.Q. gave birth to a baby unassisted and while lying on the floor and then dropped the baby while trying to put him on a bed; thinking the baby was dead, the defendant wrapped the baby in a blanket; a medical expert concluded that the baby was accidentally smothered or died of neonatal respiratory failure (the failure to have proper stimulation to cause continued breathing)).

Criminal negligence also may be established by an intentional, willful, or wanton violation of a statute designed for the protection of human life or limb. *Jones*, 353 N.C. at 165. For example, in *State v. Powell*, 336 N.C. 762 (1994), the defendant left his dogs unattended and not restrained and restricted to his property by fence in violation of Section 3-18 of the Winston-Salem Code, and the violation was intentional, willful or wanton. This was found to be sufficient evidence of culpable negligence in an involuntary manslaughter prosecution brought after the dogs killed a jogger. *Id.* at 771-73. The issue of whether culpable negligence is established by a safety statute violation arises most frequently in impaired driving cases. In that regard, the courts have repeatedly held that G.S. 20-138.1, the statute

prohibiting drivers from operating motor vehicles while under the influence of impairing substances, is a safety statute designed for the protection of human life and limb and its violation constitutes culpable negligence as a matter of law. *Jones*, 353 N.C. at 165. Other motor vehicle safety statutes that can give rise to culpable negligence include G.S. 20-141 (speed restrictions) and G.S. 20-146 (drive on right side of highway). *Jones*, 353 N.C. at 165. When a safety statute is unintentionally violated, culpable negligence exists where the violation is “accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable [foreseeability], amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others.” *Id.* (quotation omitted).

Culpable negligence sometimes is stated as an element of an offense. *See Replegle*, 181 N.C. App. at 581 (defining involuntary manslaughter to include culpable negligence); G.S. 14-32.2 (defining patient abuse to include certain culpably negligent conduct). For other offenses, the courts have held that the requisite intent can be implied from culpable negligence. *Jones*, 353 N.C. at 166 (so noting as to assault with a deadly weapon inflicting serious injury and assault with a deadly weapon with intent to kill); *Spellman*, 167 N.C. App. at 384 (so noting as to assaults and so holding as to assault with a deadly weapon on a government official); *State v. Oakman*, 191 N.C. App. 796 (2008) (same as to felonious child abuse). However, culpable negligence cannot be used to imply the necessary intent for first-degree felony murder. *Jones*, 353 N.C. 159 (explaining that for felony murder, an actual intent to commit the underlying felony is required).

Finally, a small number of North Carolina Crimes require only negligence, not criminal negligence. Although there are no cases on point, these statutes presumably incorporate the civil law negligence standard of failure to use due care. They include:

- G.S. 14-137 (willfully or negligently setting fire to woods and fields).
- G.S. 14-157 (felling trees on telephone and electric power wires).
- G.S. 14-241 (disposing of public documents).
- G.S. 14-359 (tenant neglecting crop).
- G.S. 14-418 (prohibited handling of reptiles or suggesting or inducing others to handle).