

What's the Proper Charge When the Violation of a Traffic Law Causes Someone's Death?

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In 2014, 1,284 people were killed in [traffic accidents in North Carolina](#). Most of those people were occupants in a passenger car, though motor vehicle crashes also claimed the lives of 172 pedestrians, 190 motorcyclists and 19 bicyclists. Seventy percent of the fatalities resulted from crashes that ***did not involve*** an alcohol-impaired driver. While it is fairly easy to determine the appropriate criminal charge when a person [drives while impaired and proximately causes the death of another](#), it is less obvious what the appropriate charge is when a driver's violation of another type of traffic statute proximately causes someone else's death.

The potential charges range, in order of severity, from second-degree murder (most severe) to misdemeanor death by vehicle (least severe). [First degree murder](#) is not a potential charge.

Second degree murder. A person commits second degree murder when he or she kills another human being with malice.

Sufficient evidence of malice exists to establish second-degree murder where the defendant's acts show cruelty, recklessness of consequences, or a mind that disregards social duty and is deliberately bent on mischief or where those acts manifest a total disregard for human life. The State need not show that the defendant intended to kill in order to establish malice for second-degree murder. Instead, the State may meet its burden by showing that the defendant "had the intent to perform the act of driving in such a reckless manner as reflects knowledge that injury or death would likely result, thus evidencing depravity of mind." *State v. Rich*, 351 N.C. 386, 395 (2000).

North Carolina's appellate courts have, on numerous occasions, deemed evidence of egregious conduct in impaired driving cases resulting in the death of someone other than the driver sufficient to establish second degree murder. But such charges also can be supported by other types of criminally culpable driving.

In *State v. Rollins*, 220 N.C. App. 443 (2012), for example, the court of appeals upheld the defendant's conviction of second degree murder for the death of the victim into whose car he crashed while he was fleeing from the police at high speed. The defendant in *Rollins*, who had no driver's license and had been cited twice for that violation in the previous three weeks, sped away from an officer who was attempting to stop him for shoplifting. Here's how the appellate court described his driving:

While traveling at a high rate of speed well in excess of the speed limit, defendant crossed a yellow line in order to pass cars, twice passed vehicles using a dedicated turn lane, drove through a mowed corn field and a ditch to get around cars stopped at a stop sign, and again crossed the center line to collide head-on with another vehicle while traveling 66 miles per hour and without having applied his brakes. Then, in a further attempt to avoid arrest, defendant repeatedly struck an apparently semi-conscious passenger in his efforts to get out of the vehicle and away from the police.

Id. at 454. The court found this to constitute sufficient evidence of malice.

The courts have reached similar conclusions in other cases involving a traffic fatality resulting from a defendant's flight from police. *See, e.g., State v. Pierce*, 216 N.C. App. 377 (discussed [here](#); concluding that the defendant's intentional flight from a police officer reflected knowledge that injury or death would likely result and manifested depravity of mind and disregard of human life, thus providing sufficient evidence of malice for second degree murder charges arising from death of responding officer who crashed on the way to the scene); *State v. Lloyd*, 187 N.C. App. 174 (2007) (explaining that the court "need not engage in fine tuning exactly how fast a defendant must be driving, or how many stop signs or red lights he must run to provide sufficient evidence of malice[;]" finding sufficient evidence of malice based on defendant's driving of a stolen car with a revoked license while fleeing from the police); *State v. Bethea*, 167 N.C. App. 215, 218 (2004) (finding sufficient evidence of malice based upon defendant's driving with a revoked license, fleeing law enforcement officers, speeding through a stop light and stop signs, driving up to 100 mph, crossing into the oncoming traffic lane, and turning his car lights off on dark rural roads while traveling 90 to 95 miles per hour.)

Involuntary Manslaughter. Charges of involuntary manslaughter also may be appropriate when a defendant's faulty driving kills another. Involuntary manslaughter is a common law offense defined by case law rather than by statute that consists of killing another person by an unlawful act that does not amount to a felony and is not ordinarily dangerous to life or by a culpably negligent act or omission. This charge generally is a no-brainer in impaired driving cases as the act of driving while impaired has been deemed culpable negligence as a matter of law.

Whether other types of motor vehicle violations arise to the level of culpable negligence requires closer scrutiny. Violating a traffic law unintentionally or through the lack of ordinary care is not culpable negligence unless the act is likely to result in death or great bodily harm. A person acts in a culpably negligent way if he or she knows the probable consequences of the action but is intentionally, recklessly or wantonly indifferent to the results. In determining whether a person's violation of a traffic law amounted to culpable negligence, one must consider whether the person intentionally violated a statute (culpable negligence) or simply negligently failed to observe its provisions (ordinary negligence).

Thus, the appellate courts have affirmed convictions of involuntary manslaughter based on the following driving behaviors:

- Crossing over a double yellow line on a curve with no visibility in an attempt to pass other vehicles (*State v. Wade*, 161 N.C. App. 686, 691 (2003));
- Driving 80 miles per hour down a two-lane road with a 45 mile per hour speed limit in pursuit of another vehicle (*State v. McGee*, ___ N.C. App. ___, 758 S.E.2d 661 (2014) (discussed [here](#)));
- Approaching an intersection at a speed greater than is reasonable and prudent and driving into it without stopping (*State v. Gainey*, 292 N.C. 627 (1977)); and
- Driving at an excessive speed in heavy traffic and driving to the left of a median (*State v. Jones*, 32 N.C. App. 408, 413-14 (1977)).

Misdemeanor Death by Vehicle. The elements of the offense of misdemeanor death by vehicle are (1) an unintentionally caused, (2) death of another person, (3) while a defendant was engaged in the violation of any state law or local ordinance other than impaired driving, and (4) death proximately resulting from this violation. [G.S. 20-141.4\(a2\)](#). This is the appropriate charge if a defendant violates any of the myriad of traffic laws other than impaired driving and the circumstances do not establish the culpable negligence required for a conviction of involuntary manslaughter or the malice required to support charges of second degree murder. *See, e.g., State v. Ealy*, 94 N.C. App. 707, 709 (1989) (affirming defendant's conviction for misdemeanor death by vehicle based on driving left of the center of the highway in violation of G.S. 20-146(a)); *State v. Smith*, 90 N.C. App. 161 (1988), *aff'd*, 323 N.C. 703 (per curiam) (1989) (affirming the defendant's conviction for misdemeanor death by vehicle based on the defendant's

improper passing in violation of G.S. 20-150(a)).

Death by texting. I talked to a group of magistrates yesterday about the range of offenses in death by vehicle cases, and many of them asked the same question: What is the proper charge when a person dies in an accident caused by a texting driver? I [continue to be unsure](#) of whether texting while driving in violation of [G.S. 20-137.4](#) (an infraction) amounts to culpable negligence (on the theory that this is the intentional violation of a statute or ordinance designed to protect human life) or instead is the mere negligent failure to observe a traffic law. If the former view is correct, then texting while driving that causes the death of another person is involuntary manslaughter. Under the latter view, fatal texting is misdemeanor death by vehicle. Given the prevalence of this practice and its known danger, I fear that our appellate courts soon will be called upon to answer this question.