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Homicide by Vehicle In Pennsylvania: A Question of Meaning and Constitutionality

John B. Mancke*

I. Introduction

While the current Pennsylvania Motor Vehicle Code contains many changes from the previous code, none of the changes has caused more controversy than the section dealing with homicide by vehicle.¹ Soon after the effective date of the vehicle code, county courts began to struggle with the meaning² and constitutionality³ of the section. This article will review the history of the section and analyze the meaning and constitutionality of its provisions.

II. History

The previous motor vehicle code did not contain an offense similar to homicide by vehicle. Instead, a prosecutor had to rely upon the charge of involuntary manslaughter in the Crimes Code⁴ for con-

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1. 75 PA. CONS. STAT. ANN. § 3732 (Purdon 1977).

The impetus for the new vehicle code came from the federal government through the Highway Safety Act. 23 U.S.C. § 401 *et seq.* (Supp. 1978). The court in *Commonwealth v. Barone*, 104 Montg. 341 (Pa. C.P. 1978) stated that "the primary purpose of the proposed Motor Vehicle Code is to bring the traffic rules of the Commonwealth into compliance with the requirements of the Federal Highway Safety Act, and the standards principally, the uniform standards for state highway safety programs." *Id.* at 342. See generally *Kearney, Pennsylvania's Obsolete Traffic Laws*, PA. B.A.Q., June 1973, at 561.

2. See, e.g., *Commonwealth v. Serucsak*, 101 Dauph. Rep. 50 (Pa. C.P. 1979); *Commonwealth v. Smith*, 66 Del. L. Rep. 570 (Pa. C.P. 1979); *Commonwealth v. Hartzell*, 44 Northampton Rep. 42 (Pa. C.P. 1979), *aff'd* — Pa. Super. Ct. —, 423 A.2d 381 (1980).

3. See, e.g., *Commonwealth v. Beams*, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978); *Commonwealth v. Kishbaugh*, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979); *Commonwealth v. Stahl*, 12 Pa. D. & C.3d 87 (C.P. Lycoming County 1979); *Commonwealth v. Sloat*, 92 York L. Rep. 180 (Pa. C.P. 1979); *Commonwealth v. Burt*, No. 449-1978 (C.P. Warren County March 19, 1979), *rev'd*, — Pa. —, 415 A.2d 89 (1980).

4. 18 PA. CONS. STAT. ANN. § 2504 (Purdon 1973). Section 2504 of the Crimes Code defines involuntary manslaughter as follows:

A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.

viction in cases concerning violations of the Vehicle Code or traffic ordinances that resulted in death.

In order to obtain a conviction for involuntary manslaughter, the law requires a showing of reckless conduct, gross negligence, or circumstances indicating a disregard for human life and an indifference to the consequences.⁵ The mere violation of a motor vehicle code provision has not always been sufficient to support a finding of guilt of involuntary manslaughter.⁶ The Superior Court has held that the evidence was insufficient to sustain a conviction for involuntary manslaughter in cases in which the driver was speeding,⁷ driving on the berm of the road,⁸ passing on the wrong side of the road,⁹ failing to yield at a stop sign,¹⁰ or encroaching upon the opposite lane.¹¹

As an apparent response to the inapplicability of the involuntary manslaughter charge to many motor vehicle accidents resulting in death, the legislature enacted the section dealing with homicide by vehicle.¹² The section provides that

[a]ny person who unintentionally causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic is guilty of homicide by vehicle, a misdemeanor of the first degree, when the violation is the cause of death.¹³

The homicide by vehicle section has its origin in the Uniform Vehicle Code,¹⁴ which provides the following:

Whoever shall unlawfully and unintentionally cause the death of another person while engaged in the violation of any state law or

5. Commonwealth v. Agnew, ___ Pa. Super. Ct. ___, 398 A.2d 209 (1979); Commonwealth v. Trainor, 252 Pa. Super. Ct. 332, 381 A.2d 944 (1977).

6. Commonwealth v. Agnew, ___ Pa. Super. Ct. ___, 398 A.2d 209 (1979). In *Agnew*, the Superior Court held that even though defendant was guilty of failing to yield one half of the highway and of operating a vehicle that exceeded the maximum width allowed by law, he was not guilty of involuntary manslaughter when the driver of an approaching vehicle collided with defendant's vehicle and was killed.

7. Commonwealth v. Sisca, 245 Pa. Super. Ct. 125, 369 A.2d 325 (1976).

8. Commonwealth v. Gochenaour, 234 Pa. Super. Ct. 588, 341 A.2d 163 (1975).

9. Commonwealth v. Greer, 232 Pa. Super. Ct. 448, 335 A.2d 770 (1975).

10. Commonwealth v. Clowser, 212 Pa. Super. Ct. 208, 239 A.2d 870 (1968).

11. Commonwealth v. Agnew, ___ Pa. Super. Ct. ___, 398 A.2d 209 (1979); Commonwealth v. Trainor, 252 Pa. Super. Ct. 332, 381 A.2d 944 (1977).

12. See Commonwealth v. Trainor, 252 Pa. Super. Ct. 332, 381 A.2d 944 (1977).

13. 75 PA. CONS. STAT. ANN. § 3732 (Purdon 1977).

14. The Uniform Vehicle Code is published by the National Committee on Uniform Traffic Laws and Ordinances. The Committee's 130 members include legislators, police officers, highway officials and judges. PA. DEP'T OF JUSTICE, REPORT ON THE VEHICLE CODE "RULES OF THE ROAD" 3 (1974). The Committee has promoted the adoption of a separate vehicle code provision concerning vehicular homicide in order to adequately appraise drivers of the applicability of homicide statutes to them. 5 NAT'L COMM. ON UNIFORM TRAFFIC LAWS AND ORDINANCES, NO. 7, STATE LAWS ON HOMICIDE BY VEHICLE, I, 2, 14 (Oct. 1978) [hereinafter cited as NAT'L COMM.]. Thirty-four jurisdictions have enacted laws specifically concerning vehicular homicide. *Id.* at 2. Only sixteen states, however, have included the vehicular homicide provisions in their Vehicle Codes. *Id.* at 1.

municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic shall be guilty of homicide when such violation is the proximate cause of death.¹⁵

Significantly, until 1962, the Uniform Vehicle Code described the crime as "negligent homicide" and the section provided as follows:

When the death of any person ensues within 1 year as a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.¹⁶

The difference in the two Uniform Vehicle Code versions is readily apparent. The previous version suggested the need for proof of a reckless disregard for the safety of others. The current version requires only a causally connected violation of a vehicular law or ordinance.¹⁷ The majority of states that have enacted statutes similar to the Uniform Vehicle Code have retained the requirement that there be proof that the defendant acted negligently or recklessly.¹⁸

The language of the section adopted by Pennsylvania suggests no requirement that the defendant act negligently or recklessly in order to be found guilty of the offense of homicide by vehicle. It

15. Uniform Vehicle Code § 11-903a. In 1975, the Pennsylvania Justice Department prepared a report on the proposed revisions to the Vehicle Code. The report indicated that the Uniform Vehicle Code provisions for homicide by vehicle were being followed. It erroneously stated, however, that the Pennsylvania provisions were similar to thirty-three other states. PA. DEP'T OF JUSTICE, PENNSYLVANIA VEHICLE CODE, REPORT OF PROPOSED REVISION 153 (1975). The applicability of the charge to "any" violation and the lack of any degree of culpability separates the version adopted in Pennsylvania from most of the other states. See NAT'L COMM. ON UNIFORM TRAFFIC LAW AND ORD., TRAFFIC LAWS ANNOTATED § 11-903 (1972).

16. Uniform Vehicle Code § 11-903a (1956 version).

17. By rendering a driver guilty of homicide by vehicle for causing a death as the result of violating *any* traffic law, the National Committee on Uniform Traffic Laws and Ordinances maintains that inconsistencies in prior cases will be eliminated since factfinders would no longer determine when the requisite amount of culpability exists. NAT'L COMM., *supra* note 14, at 14.

18. See generally NAT'L COMM. ON UNIFORM TRAFFIC LAW AND ORD., TRAFFIC LAWS ANNOTATED § 11-903 (1972); 74 AM. JUR. 2d *Automobiles and Highway Traffic* §§ 340-44 (1980); Annot., 20 A.L.R. 3d 473 (1968). In North Carolina, the Uniform Vehicle Code provisions were followed and the appellate courts have interpreted the law as requiring no proof of culpability or intent. See *State v. Freeman*, 31 N.C. App. 93, 228 S.E.2d 516 (1976), in which the court stated the following:

Indictment for the common law crime of manslaughter has proved ineffective as a means of repressing the negligence in motor vehicle operation causing death upon the public thoroughfares. The motorist is generally a reputable citizen, and the wrong committed by him which brings someone to his death is most often an unintentional violation of a prohibitory statute or ordinance, unaccompanied by recklessness or possible consequences of a dangerous nature, when tested by the rule of reasonable provision. Thus, it is apparent that the intention of the legislature in enacting G.S. 20-141.4 was to define a crime of lesser degree of manslaughter wherein criminal responsibility for death by vehicle is not dependent upon the presence of culpable or criminal negligence.

Id. at 98, 228 S.E.2d at 519.

In Ohio, the legislature repealed its statute after the Ohio Supreme Court, in *State v. Kotapish*, 171 Ohio St. 349, 171 N.E.2d 505 (1960), interpreted the law to require no culpability. The current Ohio statute requires proof of recklessness or negligence. OHIO REV. CODE §§ 2903.06, 2903.07 (Baldwin 1972).

stands to reason that if no requirement of recklessness exists, then the penalty for homicide by vehicle should be less than that required by involuntary manslaughter, which deals with reckless or wanton conduct. In prescribing the penalties for each type of conduct, however, the legislature made no distinction and the penalties are identical.¹⁹ A further anomaly exists since a conviction for homicide by vehicle results in a revocation of a driver's license for one year²⁰ while a conviction for involuntary manslaughter results in no revocation.

The Pennsylvania legislature never debated the homicide by vehicle provision now contained in the current vehicle code.²¹ The lack of debate on this significant change from prior law is most unfortunate. The intent of the legislature has been left for the courts' interpretation.

III. Constitutional Issues

The early court decisions dealing with the meaning and constitutionality of the section often considered only limited aspects of the issues involved.²² Other constitutional arguments were deemed waived or never mentioned by the courts.²³ Even though the Pennsylvania Supreme Court has now considered the meaning and constitutionality of this section on two occasions,²⁴ confusion and unanswered questions still exist. After each of the constitutional issues is understood, the difficulty of interpreting and applying this section becomes evident.

A. *Vagueness*

Immediately after the enactment of the current Vehicle Code,

19. A misdemeanor of the first degree is punishable by a prison sentence of up to five years and/or a fine up to \$5,000. 18 PA. CONS. STAT. ANN. §§ 1101, 1104 (Purdon 1973).

20. See 75 PA. CONS. STAT. ANN. § 1532 (Purdon 1977). To date, no court has discussed this issue in its consideration of the meaning or constitutionality of homicide by vehicle. The absence of any provisions for suspension or revocation of a defendant's operating privileges provides some support for the theory that involuntary manslaughter has no applicability to cases concerning violations of the Vehicle Code.

21. The Pennsylvania Justice Department initiated a Vehicle Code Project in 1973. In 1975, after two years of study, the Department promulgated a Report of Proposed Revision, which included a homicide by vehicle section. PA. DEPT OF JUSTICE, REPORT ON THE VEHICLE CODE "RULES OF THE ROAD" 7-8 (1974). The proposed section was adopted by the legislature without change in 1976. 75 PA. CONS. STAT. ANN. § 3732 (Purdon 1977). The homicide by vehicle statute became effective July 1, 1977. *Id.*

22. *E.g.*, Commonwealth v. Burt, ___ Pa. ___, 415 A.2d 89 (1980). The first appellate court decision concerning the homicide by vehicle statute failed to address the constitutional issues raised. Commonwealth v. Danchision, ___ Pa. Super. Ct. ___, 410 A.2d 1274 (1979).

23. *E.g.*, Commonwealth v. Burt, ___ Pa. ___, 415 A.2d 89 (1980). In the second appellate court decision concerning the statute, the primary constitutional issue was deemed by two judges to be waived since it had not been properly preserved. Commonwealth v. Barone, ___ Pa. Super. Ct. ___, 419 A.2d 457 (1980).

24. See Commonwealth v. Field, ___ Pa. ___, 417 A.2d 160 (1980); Commonwealth v. Burt, ___ Pa. ___, 415 A.2d 28 (1980).

county courts began to consider the meaning of the homicide by vehicle provision. A review of those decisions indicates a wide variety of interpretations. The majority of the lower courts ruled that the legislature intended to impose strict liability without regard to culpability.²⁵ The Dauphin County Court suggested that the legislature intended to punish only conduct that constitutes a gross deviation from the standard of care.²⁶ The Adams County Court took a different position and held that the legislature intended "mere negligence" to be the basis of criminal responsibility.²⁷ Another lower court simply concluded that the statute was too vague to interpret.²⁸ The county courts were obviously in need of appellate court guidance on the issue.

The Superior Court struggled inconclusively with the meaning of the statute. In *Commonwealth v. Barone*,²⁹ two judges held that this section required proof that a defendant's actions amounted to a deviation from the standard of care" before a conviction could be upheld. Two judges regarded the issue of legislative intent as exceedingly close, but opted for the position that the legislature intended to impose strict criminal liability rendering the section unconstitutional.³⁰ The remaining judges concluded that the legislature clearly intended to impose strict liability and that this was con-

25. See *Commonwealth v. Koch*, 67 Lanc. L. Rep. 145 (Pa. C.P. 1980); *Commonwealth v. Kishbaugh*, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979); *Commonwealth v. Stahl*, 12 Pa. D. & C.3d 87 (C.P. Lycoming County 1979); *Commonwealth v. Hartzell*, 44 Northampton Rep. 42 (Pa. C.P. 1979), *aff'd*, — Pa. Super. Ct. —, 423 A.2d 381 (1980).

26. *Commonwealth v. Serucsak*, 101 Dauph. Rep. 50 (Pa. C.P. 1979).

27. *Commonwealth v. Beams*, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978).

28. *Commonwealth v. Burt*, No. 449-1978 (Pa. C.P., Warren County March 19, 1979), *rev'd*, — Pa. —, 415 A.2d 89 (1980).

29. — Pa. Super. Ct. —, 419 A.2d 457 (1980). The trial court in *Commonwealth v. Barone*, 104 Montg. 341 (Pa. C.P. 1978) interpreted the homicide by vehicle statute as requiring reckless conduct. The court simply read the involuntary manslaughter standards into the new statute and asserted that a legislative intent to require reckless behavior could be implied for two reasons. First, since the majority of other states require reckless conduct and the purpose of the new Vehicle Code was to promote uniformity among the states, the legislature must have contemplated the requirement of reckless behavior. Second, since the homicide by vehicle statute and the involuntary manslaughter statute require the same penalty, "[s]ome degree of culpability must have been contemplated in the legislative plan to provide similar penalties." *Id.* at 344.

Another authority for the "recklessness theory" is the Pennsylvania Crimes Code, which provides that "[w]hen the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto." 18 PA. CONS. STAT. ANN. § 302(c) (Purdon 1973).

30. — Pa. Super. Ct. —, 419 A.2d 457, 478 (1980) (Spaeth, J., concurring). In his concurring opinion, Judge Spaeth noted that the charge of careless driving was debated and removed from the proposed new Vehicle Code. The comments during the debate are of some interest in determining whether the legislature intended to create strict criminal liability or to impose criminal culpability on the basis of ordinary negligence in any section of the Code. The legislative comments included the following:

Representative Eckensberger: . . . It shocks my conscience that we should say that it henceforth will be a crime if you drive carelessly. Now that amounts to ordinary negligence. . . .

PA. LEGIS. J., HOUSE OF REPRESENTATIVES 4072 (1976).

stitutionally permissible.³¹ As a result, this decision was of little assistance in resolving the intent of the legislature.³² Further clarification was needed from the Supreme Court.

In *Commonwealth v. Burt*,³³ the Warren County Court held that section 3732 of the Vehicle Code was unconstitutionally vague. The Commonwealth appealed the decision providing the Pennsylvania Supreme Court its first opportunity to discuss the meaning of the statute. The Supreme Court reversed the lower court ruling and stated that “. . . section 3732 defines ‘homicide by vehicle’ as a death caused by any person’s conduct violating law or municipal ordinance applying to vehicles or traffic regulations.”³⁴ The court held that the section required proof of nothing more than a traffic violation causing death. Unfortunately, the court discussed neither the constitutionality of such an interpretation nor the degree of causation necessary for a conviction.

B. Imposition of Strict Criminal Liability

Although the Supreme Court declared that the section was not unconstitutionally vague, the decision did not address the issue of whether a strict liability statute requiring no mens rea or culpability is constitutional in Pennsylvania.³⁵

In *Commonwealth v. Barone*,³⁶ Judge Spaeth stated that to impose strict liability without culpability would violate due process since a conviction would “gravely [besmirch] the defendant’s reputation and because the punishment is too severe.”³⁷ Judge Spaeth concluded that the imposition of a strict liability crime constitutes a violation of due process under our State constitution and very well

Representative Manderino: . . . I see no reason to introduce into the statutes of Pennsylvania a new concept in the violation of the Motor Vehicle Code wherein ordinary negligence, carelessness, can be the reason for a citation. . . .
Id. at 4160.

Representative Scirisa: . . . I cannot think of any other area in the law where ordinary negligence carries with it a criminal penalty. We should leave this a civil matter. . . .
Id. at 4161.

31. ___ Pa. Super. Ct. ___, 419 A.2d 457, 487 (Wieand, J., dissenting).

32. See *Commonwealth v. Gibson*, 102 Dauph. Rep. 109 (Pa. C.P. 1980); *Commonwealth v. Koch*, 67 Lanc. L. Rep. 145 (Pa. C.P. 1980).

33. ___ Pa. ___, 415 A.2d 89 (1980).

34. *Id.* at ___, 415 A.2d at 92. The Superior Court has recently held that a private corporation may be held criminally liable for homicide by vehicle. *Commonwealth v. McIlwain School Bus Lines, Inc.*, ___ Pa. Super. Ct. ___, 423 A.2d 413 (1980).

35. Similar laws in other states have been held to be constitutional. See, e.g., *State v. Edwards*, 236 Ga. 104, 222 S.E.2d 385 (1976); *People v. Garman*, 411 Ill. 279, 103 N.E.2d 636 (1952); *State v. Twitchell*, 8 Utah 2d 314, 333 P.2d 1075 (1959). In *Ketchum v. Ward*, 422 F. Supp. 934 (W.D.N.Y. 1976), the court stated that “[t]here are academic and theoretical difficulties not of constitutional proportions with making less than reckless conduct punishable.” *Id.* at 938.

36. ___ Pa. Super. Ct. ___, 419 A.2d 457 (1980).

37. *Id.* at ___, 419 A.2d at 484 (Spaeth, J., concurring).

may constitute a violation of federal due process.³⁸

The Pennsylvania Supreme Court in *Commonwealth v. Field*,³⁹ rejected this due process argument. The Supreme Court, in finding the statute constitutional, stated the following:

[S]ection 3732 requires the Commonwealth to prove that appellee has deviated from the standard of care established by section 3703, the underlying Vehicle Code provision allegedly violated here. . . . Consistent with the culpability requirement, section 3703 leaves for determination at trial whether appellee knew, or should have known, he engaged in the conduct claimed to be in violation of that section. Thus, for example, it remains to be decided if a reasonable driver could, in view of the congestion of the terminal exit, know where the sidewalk was or, indeed, if a sidewalk existed.⁴⁰

This language suggests that only death resulting from culpable conduct will be punishable by this section. The concurring opinion of Judge Flaherty noted that the court had “construed the Code to . . . require *culpable conduct*, i.e., a mens rea, as a requisite for conviction.”⁴¹ This construction seems to nullify the court’s initial proclamation that this section deals with “death caused by any person’s conduct violating law or municipal [regulations].”⁴² Since our courts have long held that a lack of mens rea or culpability is no defense to many traffic offenses,⁴³ the Supreme Court must be requiring proof

38. *Id.* at ___, 419 A.2d at 482. (Speath, J., concurring). See *United States v. Heller*, 579 F.2d 990 (6th Cir. 1978); *Commonwealth v. Koczwara*, 397 Pa. 575, 155 A.2d 825 (1959).

39. ___ Pa. ___, 417 A.2d 160 (1980).

40. *Id.* at ___, 417 A.2d at 163. In *Field*, the lower court declared the homicide by vehicle section unconstitutional and the Commonwealth appealed. The facts of the case are significant. The victim was a television cameraman who was assigned to film picketing at an ARCO terminal. Police asked the victim to move to a sidewalk to do his filming. As six ARCO vehicles began to leave, picketers illegally crowded the terminal exit. Defendant Richard Field was operating the last of the six vehicles, none of which were moving at an excessive speed. Police had to push back the crowd to permit the vehicles to leave the terminal. The cameraman continued to film the activity on the sidewalk near the curb. As the defendant’s vehicle proceeded through the exit, the side of the trailer struck the victim throwing him to the sidewalk. He was fatally injured when the rear wheels ran over him.

Defendant was arrested and charged with driving on the sidewalk, 75 PA. CONS. STAT. ANN. § 3703 (Purdon 1977); reckless driving, 75 PA. CONS. STAT. ANN. § 3714 (Purdon 1977); and homicide by vehicle, 75 PA. CONS. STAT. ANN. § 3732 (Purdon 1977). After a coroner’s hearing, the reckless driving charge was dismissed but the other charges were upheld at the hearing. The lower court granted the defendant’s motion to dismiss the information based on homicide by vehicle. *Commonwealth v. Field*, No. CC7906073A (Pa. C.P., Allegheny County Feb. 12, 1980), *rev’d*, ___ Pa. ___, 417 A.2d 160 (1980). The majority opinion of the Supreme Court in *Field* initially suggested that the mere violation of the vehicle code provides the culpable conduct necessary to convict. Absolute liability seems to have been imposed. The reference to whether the defendant knew or should have known he was violating the Vehicle Code, however, indicates a requirement of knowledge or negligence on the part of the defendant. The reference to a reasonable man standard is also indicative of a negligence standard of culpability. The underlying section allegedly violated, however, contains no requirement for negligence or knowledge and imposes strict liability. 75 PA. CONS. STAT. ANN. § 3703 (Purdon 1977). The majority opinion is additionally confusing since it appears to adopt a causation standard imposed only in cases of absolute liability.

41. *Id.* at ___, 417 A.2d at 164.

42. *Commonwealth v. Burt*, ___ Pa. at ___, 415 A.2d at 92 (1980).

43. See, e.g., *Commonwealth v. Winkler*, 10 Centre L.J. 589 (Pa. C.P. 1975) (driving

of more than a violation of a traffic law.⁴⁴ The requirement of culpable conduct does not appear anywhere in the section but was judicially imposed by the Supreme Court to preserve it from constitutional attack.⁴⁵ The degree of culpable conduct required for a conviction, however, was left unresolved.

The degree of culpability is the issue that is central to both the meaning and constitutionality of the section. Our criminal system has recognized four degrees of culpable conduct. The Crimes Code provides that culpability exists only if the defendant acted intentionally, knowingly, recklessly, or negligently.⁴⁶ In order to convict on the basis of negligent conduct, however, the defendant's actions must constitute a gross deviation from the required standard of care⁴⁷ and proof of simple or civil negligence has been insufficient for conviction.⁴⁸

By its terms, section 3732 does not concern intentional conduct. If the required degree of culpability is a conscious disregard, recklessness, or gross negligence on the part of the defendant, then the charge becomes identical to involuntary manslaughter.⁴⁹ It is doubt-

under the influence); *Commonwealth v. Lipka*, 10 Centre L.J. 593 (Pa. C.P. 1975) (speeding); *Commonwealth v. Roth*, 60 Lanc. L. Rep. 133 (Pa. C.P. 1966) (driving under the influence); *Commonwealth v. Ullis*, 22 Luz. L. Rep. 354 (Pa. C.P. 1922) (lighting violation); *Commonwealth v. Mostowski*, 18 Pa. D. & C.2d 248 (C.P. Montour County 1959) (overweight violation); *Commonwealth v. Hamilton*, 37 Somerset L.J. 408 (Pa. C.P. 1979) (speeding violation); *Commonwealth v. Mishler*, 2 Somerset L.J. 489 (Pa. C.P. 1925) (lighting violation). See also *Commonwealth v. Koons*, 216 Pa. Super. Ct. 402, 268 A.2d 202 (1970); *Commonwealth v. Boylan*, 6 Pa. Commw. Ct. 629, 297 A.2d 831 (1972).

44. A strict reading of the statute, however, mandates liability upon the violation of any traffic law without proof of recklessness or negligence. See MEYER, PA. VEHICLE CODE ANN. § 3732 (1978) (comment). A literal construction of the statute is supported by the Pennsylvania statutory construction rules, which provide that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 PA. CONS. STAT. ANN. § 1921(b) (Purdon Supp. 1979). Furthermore, the National Committee on Uniform Traffic Laws and Ordinances maintains that the gravamen of the offense is the violation of any traffic law or ordinance. See note 17, *supra*. This position is authoritative since the Pennsylvania statutory construction rules provide that "[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." 1 PA. CONS. STAT. ANN. § 1927 (Purdon Supp. 1979).

45. In cases under the involuntary manslaughter statute, Pennsylvania courts have held that not every violation of the law will render a motorist criminally liable for the death of another. See, e.g., *Commonwealth v. Sisca*, 245 Pa. Super. Ct. 125, 369 A.2d 325 (1976); *Commonwealth v. Hinds*, 244 Pa. Super. Ct. 182, 366 A.2d 1252 (1976).

46. 18 PA. CONS. STAT. ANN. § 302(a) (Purdon 1973). The Crimes Code culpability requirements would be applicable to homicide by vehicle unless the courts rule that the charge imposes absolute liability. See 18 PA. CONS. STAT. ANN. §§ 107, 305(a)(2) (Purdon 1973). See also *Commonwealth v. Serucsak*, 101 Dauph. Rep. 50 (Pa. C.P. 1979); *Commonwealth v. Hartzell*, 44 Northampton L.J. 42 (Pa. C.P. 1979), *aff'd*, — Pa. Super. Ct. —, 423 A.2d 381 (1980).

47. 18 PA. CONS. STAT. ANN. § 302(b)(4) (Purdon 1973).

48. *Commonwealth v. Gilliland*, — Pa. Super. Ct. —, 422 A.2d 206 (1980). *Commonwealth v. Trainor*, 252 Pa. Super. Ct. 332, 381 A.2d 944 (1977).

49. The court in *Commonwealth v. Serucsak*, 101 Dauph. Rep. 50 (Pa. C.P. 1979), suggested that "[h]omicide by vehicle is a new model of the old involuntary manslaughter as applied to automobile accidents. . . ." *Id.* at 51. "This [degree of culpability] is not all that different from the old element of involuntary manslaughter - just as the new cars are not all

ful that the legislature intended this section to be identical to involuntary manslaughter.⁵⁰ No reason to enact the new section would have existed if the result was to be the same.

Although the Supreme Court has not ruled directly on the degree of required culpability, the Superior Court discussed the issue on several occasions.⁵¹ Significantly, one of those opinions⁵² was written after the Supreme Court's ruling in *Commonwealth v. Field*.⁵³ The Superior Court in *Commonwealth v. Nay*,⁵⁴ concluded that in order to convict a defendant of this offense, his actions must constitute "culpable" negligence. The court suggested that homicide by vehicle differs from involuntary manslaughter, which requires proof that a defendant caused death in a reckless or grossly negligent manner or in a manner evidencing a conscious disregard for human life or indifference to the consequences.

While at first glance, the *Nay* decision attempts to answer the culpability question, a closer scrutiny suggests that unanswered questions remain. The *Nay* decision cited an earlier Superior Court opinion⁵⁵ interpreting the current Vehicle Code that stated the following:

It is true that under the present involuntary manslaughter statute a negligent operator completely escapes any criminal punishment unless the violation which precipitated death was perpetrated "in a reckless or grossly negligent manner." We suggest that the legislature intended to fill this void not by punishing every death causing violation, but rather only intended to reach those

that different from last year's model." *Id.* at 56. In *Commonwealth v. Groce*, 15 Pa. D.&C. 3d 379 (C.P. Dela. County 1979), *aff'd*, ___ Pa. Super. Ct. ___, ___ A.2d ___ (1980), the court ruled that the offense of homicide by vehicle does not supersede or preempt the offense of involuntary manslaughter.

50. The previous availability of involuntary manslaughter to prosecute reckless or criminally negligent drivers indicates that the legislature intended to define a new offense penalizing a lesser culpability. *Commonwealth v. Beams*, 10 Pa. D.&C. 3d 616 (C.P. Adams County 1978).

The punishment of ordinary negligence by penal sanctions has received severe criticism. Critics note that the fundamental concept of criminal law requires mens rea, which includes some degree of awareness. *E.g.*, *Ketchum v. Ward*, 422 F. Supp. 934 (W.D.N.Y. 1976); Hall, *Negligent Behavior Should be Excluded from Penal Liability*, 63 COLUM. L. REV. 632 (1963); Comment, *The Fallacy and Fortuity of Motor Vehicle Homicide*, 41 NEB. L. REV. 793 (1962). A crime based upon mere negligence, however, is fortuitous since liability arises out of the chance that the inadvertent driver is involved in a fatal accident. *Id.* Furthermore, criminal liability for ordinary negligence does not promote any theory of criminal punishment. Comment, *Is Criminal Negligence a Defensible Basis for Penal Liability?*, 16 BUFFALO L. REV. 749, 751 (1967).

51. See *Commonwealth v. Nay*, ___ Pa. Super. Ct. ___, 421 A.2d 1231 (1980); *Commonwealth v. Barone*, ___ Pa. Super. Ct. ___, 419 A.2d 457 (1980); *Commonwealth v. Danchision*, ___ Pa. Super. Ct. ___, 410 A.2d 1274 (1979).

52. *Commonwealth v. Nay*, ___ Pa. Super. Ct. ___, 421 A.2d 1231 (1980).

53. ___ Pa. ___, 417 A.2d 160 (1980).

54. ___ Pa. Super. Ct. ___, 421 A.2d 1231 (1980). In the *Nay* decision, the Superior Court considered whether an acquittal of involuntary manslaughter would prevent a conviction of homicide by vehicle. The court ruled that it would not. See also *Commonwealth v. Koch*, 67 Lanc. L. Rep. 145 (Pa. C.P. 1980).

55. *Commonwealth v. Barone*, ___ Pa. Super. Ct. ___, 419 A.2d 457 (1980).

violations in which there has been a “gross deviation” from the required standard of care. There was a need for a new offense governing deaths resulting from negligent violations of the rules of the road. This is that measure and we would so hold.⁵⁶

This quote clearly suggests that only “gross deviation” from the standard of care will result in a conviction. The standard is, therefore, identical to gross negligence.

The courts have always recognized a distinction between civil negligence and culpable criminal negligence.⁵⁷ That distinction, however, has been lost in an attempt to save the homicide by vehicle section from constitutional attack. If the court is indicating that proof of civil or ordinary negligence in a violation of the motor vehicle code is all that is required for a conviction, then a radical departure from current criminal law has occurred. If, however, the court is relying upon the negligence provisions of the Crimes Code, then the standard of culpability is the same as the degree required to convict under the involuntary manslaughter provision. Civil or ordinary negligence has never been sufficient to convict in such cases.⁵⁸

Certainly, clarification of the degree of culpability required for conviction is basic to any attempt to understand and evaluate the constitutional validity of the section.⁵⁹

C. Equal Protection

While the Supreme Court has not ruled on the constitutionality of this statute from the standpoint of the Equal Protection Clause,⁶⁰ several lower courts have considered and rejected the issue.⁶¹

It has been argued that the section is unconstitutional since the action of a violator of the Vehicle Code or traffic ordinance may be identical in two instances but only one of the violators is punished depending upon whether death results. This argument has been rejected on the basis that the difference in treatment has a rational

56. *Id.* at ___, 419 A.2d at 465 (emphasis added) (citations omitted).

57. *See, e.g.,* Commonwealth v. Busler, 445 Pa. 359, 284 A.2d 783 (1971); Commonwealth v. Trainor, 252 Pa. Super. Ct. 332, 381 A.2d 944 (1977).

58. In *Commonwealth v. Gilliland*, ___ Pa. Super. Ct. ___, 422 A.2d 207 (1980), the Superior Court noted that “[a]lthough the appellant’s failure to observe the George vehicle in sufficient time to avoid the collision is clearly a deviation from the standard of reasonable care, it does not rise to the level of gross negligence necessary to sustain a criminal conviction.” *Id.* at ___, 422 A.2d at 207 (1980).

59. Judge Hoffman, who concurred in the Superior Court opinion in *Commonwealth v. Nay*, ___ Pa. Super. Ct. ___, 421 A.2d 1231 (1980) stated the following: “I join in the court’s opinion and wish to add that although we are bound by our Supreme Court’s decision in *Commonwealth v. Field*, it is hoped that our Supreme Court will reconsider the issues raised in that case and clarify this difficult area of the law.” *Id.* (Hoffman, J., concurring) (citations omitted).

60. In *Commonwealth v. Field*, ___ Pa. ___, 417 A.2d 160 (1980), the equal protection issue was not pursued although it was originally raised.

61. *E.g.,* Commonwealth v. Beams, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978); Commonwealth v. Sloat, 92 York L. Rep. 180 (Pa. C.P. 1979).

basis⁶² and that the result of an action is the basis for most criminal sanctions.⁶³

A more difficult issue exists if the statute is construed to require proof of only simple or ordinary negligence in the violation of a traffic law or ordinance. The Commonwealth would, in effect, be prescribing a different standard depending upon whether the defendant was a motorist or a nonmotorist.⁶⁴ In order for a nonmotorist to be guilty of a first degree misdemeanor when his actions cause death, the person would have to be guilty of reckless or grossly negligent conduct. A motorist, however, could be guilty of a first degree misdemeanor if he acted negligently in the violation of the Motor Vehicle Code or a traffic ordinance provision. If the statute is interpreted to require no culpable conduct the equal protection argument becomes even more troublesome for the same reasons.

D. Cruel and Unusual Punishment

In several cases,⁶⁵ the defendants have argued that the penalties prescribed are cruel and unusual and overly harsh. This argument actually depends upon the degree of culpability that is required for conviction. If the same degree of culpability is required as is required for involuntary manslaughter, then the punishment, being the same, is certainly not cruel or unusual. If, however, no degree of culpability is required or if simple negligence becomes the standard of culpability, then the punishment prescribed seems unusually harsh.⁶⁶

When the lower courts have separately considered the cruel and unusual punishment issue, the courts have upheld the legislature's power to establish the penalty for this crime⁶⁷ or noted the court's power to temper the punishment at the time of sentencing.⁶⁸ In doing so, they have refused to declare the statute unconstitutional.

IV. Causation Issue

The homicide by vehicle section is silent with regards to the degree of causation that is required in order to support a conviction.⁶⁹

62. Commonwealth v. Sloat, 92 York L. Rep. 180 (Pa. C.P. 1979).

63. Commonwealth v. Beams, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978).

64. Although this argument was not raised, one lower court discussed and rejected this difficult issue. Commonwealth v. Beams, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978).

65. *E.g.*, Commonwealth v. Beams, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978); Commonwealth v. Kishbaugh, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979); Commonwealth v. Sloat, 92 York L. Rep. 180 (Pa. C.P. 1979).

66. Commonwealth v. Barone, — Pa. Super. Ct. —, 419 A.2d 457, 479 (1980) (Spaeth, J., concurring).

67. Commonwealth v. Kishbaugh, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979); Commonwealth v. Sloat, 92 York L. Rep. 180 (Pa. C.P. 1979).

68. Commonwealth v. Beams, 10 Pa. D. & C.3d 616 (C.P. Adams County 1978).

69. 75 PA. CONS. STAT. ANN. § 3732 (Purdon 1977).

It is clear, however, that causation is an essential element of the offense. Although the current Uniform Vehicle Code uses proximate cause as its test,⁷⁰ the Pennsylvania version does not contain any such reference.

Traditionally, Pennsylvania has not employed proximate cause in criminal cases.⁷¹ In *Commonwealth v. Guiliano*,⁷² the Superior Court recently noted that "traditional tort concepts of proximate cause have long since been discarded in homicide prosecutions [involving manslaughter] in Pennsylvania in favor of the more stringent test of direct or legal cause."⁷³ Several recent decisions illustrate the problems the courts have encountered in determining the degree of causation necessary for a homicide by vehicle conviction.

In *Commonwealth v. Gibson*,⁷⁴ the Dauphin County Court was required to define the type of causation required to support a conviction for homicide by vehicle. In *Gibson*, the defendant operated a motor vehicle while under suspension. He struck a child on a motor bike resulting in the death of the child. No evidence of negligent driving on the part of defendant was produced. The defendant failed to stop at the scene and was eventually charged with homicide by vehicle, "hit and run" and driving under suspension.

The court recognized the lack of a standard guideline for determining when causal connection is sufficiently direct to warrant criminal liability. The court concluded that the Commonwealth was obligated to prove that the death occurred as a "probable consequence" of the defendant's driving the automobile while he was under suspension.⁷⁵ The court ruled that the Commonwealth failed to do this and the defendant was found not guilty of homicide by vehicle.

In defining the degree of causation necessary to convict, the

70. Uniform Vehicle Code § 11-903a.

71. Pennsylvania has traditionally required direct cause in vehicle cases. The direct cause or "but for" test is found in the Crimes Code, which provides that "[c]onduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred." 18 PA. CONS. STAT. ANN. § 303(a)(1) (Purdon 1973). Under the direct cause test, a defendant's act in violating a traffic law is not the direct cause of a death unless the death would not have occurred but for that violation. See ADMIN. OFFICE OF PA. COURTS AND PA. COLLEGE OF THE JUDICIARY, SUBCOMMITTEE DRAFT OF PROPOSED JURY INSTRUCTIONS - CRIMINAL, § 17-3732 (July 29, 1977). If the evidence indicates that the death would have occurred regardless of his violation, a not guilty verdict must be returned. See *Commonwealth v. Costello*, 61 Wash. R. 70, (Pa. C.P. 1980). Furthermore, if an intervening act by the victim or a third party contributes to the death to such an extent that the defendant's act is not the direct cause, sufficient causation will not exist for conviction. *Id.*

72. — Pa. Super. Ct. —, 418 A.2d 476 (1980).

73. *Id.*, at —, 418 A.2d at 476. See *Commonwealth v. Kishbaugh*, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979) ("direct" causation standard used).

74. 102 Dauph. Rep. 109 (Pa. C.P. 1980).

75. *Id.* In *Commonwealth v. Field*, — Pa. —, 417 A.2d 160 (1980), the Supreme Court stated that, at the very least, the death must be a "probable consequence" of the defendant's culpable conduct. This standard is applicable to absolute liability cases. See 18 PA. CONS. STAT. ANN. § 303(d) (Purdon 1973).

court relied upon section 303(d) of the Crimes Code, which provides: "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 conduct of the actor."⁷⁶ If, however, homicide by vehicle does not impose absolute liability, then the section cited by the court was improper.⁷⁷

In *Commonwealth v. Costello*,⁷⁸ the Washington County Court of Common Pleas granted a defendant's Motion in Arrest of Judgment after a jury conviction for homicide by vehicle. The court ruled that even if the jury concluded that the defendant was speeding⁷⁹ when he struck a pedestrian, it was impossible to conclude that the defendant's speed caused the victim's death. The court suggested that the Commonwealth had failed to prove that the result would have been any different if the defendant had not been speeding.

The first appellate attempt to clarify the causation issue resulted from the death of a police officer who was engaged in a high speed pursuit of the defendant.⁸⁰ The lower court had granted defendant's motion quashing the information but the Superior Court reversed. The Superior Court noted that the theory of proximate causation is "unacceptable to our notions of criminal justice because it is grounded in an expansive concept of foreseeability."⁸¹

In determining whether sufficient direct causation existed to convict, however, the Superior Court utilized the foreseeability concept it had suggested was inapplicable. The Court stated:

Having observed Lang speeding, Officer Redding was duty-bound to pursue him, which duty arguably became more compelling with each Vehicle Code violation. In a sense, Officer Redding was bound as if by a chain to Lang's vehicle; and, at the speed Lang was travelling, it was foreseeable that the chain would break, hurdling Officer Redding to his death. Lang knew or should have known that his actions, speeding and attempting to elude arrest, were likely to result in injury to someone: either to himself, to some innocent third party, or to the pursuing police officer. From the information and additional facts, it would appear that a jury could reasonably conclude, beyond a reasonable doubt, that Lang's conduct *directly* resulted in Officer Redding's death and was not a fortuitous or coincidental event unrelated to the direct result of his conduct.⁸²

76. 18 PA. CONS. STAT. ANN. § 303(d) (Purdon 1973).

77. See 18 PA. CONS. STAT. ANN. § 303(a) (Purdon 1973), See also *Commonwealth v. Kishbaugh*, 11 Pa. D. & C.3d 146 (C.P. Lehigh County 1979).

78. 61 Wash. R. 70 (Pa. C.P. 1980).

79. The court also concluded that speeding alone could not support the charge of reckless driving, which had been the basis for the homicide by vehicle charge.

80. *Commonwealth v. Lang*, ___ Pa. Super. Ct. ___, 426 A.2d 691 (1980).

81. *Id.*, at ___, 426 A.2d at 695.

82. *Id.*, at ___, 426 A.2d at 695-96.

These cases suggest that the courts will be requiring the Commonwealth to prove a more direct causation than is required in a civil case. The difficulty in applying the "direct" causation standard, however, will certainly continue.

Although the Commonwealth must prove that a violation of the vehicle code or traffic ordinance caused the death,⁸³ the specific section violated need not be cited or charged in the complaint. The Superior Court, in *Commonwealth v. Wilkinson*,⁸⁴ rejected a lower court's conclusion that a charge of homicide by vehicle may be prosecuted only if a second, supporting charge is filed. The court concluded that if the Commonwealth gives the defendant adequate notice of the particular vehicle code or traffic ordinance allegedly violated, the Commonwealth is not required to file a separate charge for such violation.

V. Conclusion

The homicide by vehicle section has caused numerous court decisions since its enactment. Those decisions, often written without guidance of our appellate courts, suggest the necessity of a definitive Supreme Court ruling.

The first attempt at a definitive appellate ruling resulted in the exact opposite. The Superior Court, in *Commonwealth v. Barone*,⁸⁵ wrote three separate opinions without any of the opinions receiving majority support. The Superior Court decision constituted little value as a precedent. The various opinions reflected the sharp division of thinking in regard to the constitutional issues.

The Supreme Court also had an opportunity to consider the meaning of the section.⁸⁶ It held that the section was not vague and suggested that death caused by a violation of the Motor Vehicle Code or a traffic ordinance would result in a conviction.

The Court, however, subsequently had to decide whether that interpretation violated due process. The Supreme Court ruled that some degree of culpability is required to avoid violating the due process clause. By rewriting the statute to require culpability, the Supreme Court has attempted to correct a faulty statute. In doing so, it has created more problems than it has solved. Left unanswered are the questions concerning the degree of culpability required, the relationship of homicide by vehicle to involuntary manslaughter, and the degree of causation required for conviction.⁸⁷

83. *Commonwealth v. Smith*, 66 Del. Rep. 570 (Pa. C.P. 1979) (failure to prove more than an accident requires a not guilty verdict).

84. ___ Pa. Super. Ct. ___, 420 A.2d 647 (1980).

85. ___ Pa. Super. Ct. ___, 419 A.2d 457 (1980).

86. *Commonwealth v. Burt*, ___ Pa. ___, 415 A.2d 89 (1980).

87. Numerous other issues remain to be resolved. The current status of the law makes it

The courts' problems with this section are a direct result of the inadequacies of the legislation. The section was never debated by the legislature and its meaning was left entirely for the courts to decide. The legislature should review this section and clarify its intentions. The task of defining the degree of culpability required for conviction is better left to the legislature. The courts' attempts to salvage this section from constitutional attack will result in further confusion and unwarranted usurpation of the duties of the legislature. If the legislature intends punishment without any criminal culpability, then the courts should declare the statute unconstitutional. If culpability is required, the legislature should define the degree.

almost impossible for a lower court to instruct a jury properly on the charge of homicide by vehicle. *See* Commonwealth v. Seruscak, 101 Dauph. Rep. 50 (Pa. C.P. 1979). Commonwealth v. Shinn, 67 Del. L.R. 739 (Pa. C.P. 1980). The difference between homicide by vehicle and involuntary manslaughter is particularly difficult to explain. *See* Commonwealth v. Nay, ___ Pa. Super. Ct. ___, 421 A.2d 1231 (1980).

The relationship of the homicide by vehicle charge to the underlying traffic violation will continue to cause problems. *See* Commonwealth v. Wilkinson, ___ Pa. Super. Ct. ___, 420 A.2d 647 (1980). Double jeopardy and merger arguments also remain to be resolved. *See* Commonwealth v. Pounds, ___ Pa. Super. Ct. ___, 421 A.2d 1126 (1980); Commonwealth v. Spurgeon, 107 Mont. L.R. 297 (Pa. C.P. 1980). *See also* Commonwealth v. Campana, 455 Pa. 622, 314 A.2d 854 (1974).

The possibility also exists that a judge could acquit a defendant of the underlying summary charge but a jury could convict him of the homicide by vehicle charge. A juvenile, who normally can not be adjudged delinquent for a summary violation, may find himself subjected to a delinquency hearing if death results from a summary traffic violation. *Cf.* 42 PA. CONS. STAT. ANN. § 6302 (Purdon Supp. 1979).

