

The Accidental Criminal Defendant: The Fatal Tracy Morgan Collision Throws Spotlight on the Growing Criminalization of the Traffic Accident

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It came as no surprise that [Tracy Morgan sued Walmart last week](#) after the [fatal collision on June 7, 2014](#) between one of the company's trucks and Morgan's limousine on the New Jersey Turnpike. Early word that the [Walmart truck driver admitted to being awake for more than 24 hours](#) prior to the crash left little doubt that a civil suit would follow. In the criminal context, however, this apparent case of driver fatigue sends a wake-up call to those who travel New Jersey's roadways. A traffic accident can be a serious crime depending on the circumstances.

More and more in recent years, criminal prosecutions arise from traffic collisions traditionally deemed accidental. Gone are the days of swerving drivers obstructing their view by unfurling giant paper maps and attempting to read them while navigating the roadways (often with unrestrained children rolling around in the back seat). In the past, such a scene was not a crime, it was a regular occurrence. Not too long ago even alcohol-related crashes were treated as "accidents" and, when a fatality or injury tragically resulted, a likely criminal sentence was probation. But steady and significant changes to New Jersey's vehicular homicide (commonly called "death-by-auto") law, beginning in the 1990s, ushered in a new era. Now, New Jersey's criminal law regarding automobile related injuries and death is severe and applicable to many scenarios drivers might not expect until it's too late and they find themselves sitting as criminal defendants.

Safe and responsible driving saves lives, and fair laws that promote that goal are essential. While there certainly can be no lament for the days of lawless roadways, drivers should be aware of the increasing potential for criminal charges.

Much like the driver in the Tracy Morgan case who apparently made damaging admissions at the scene, most motorists in similar circumstances readily explain their conduct to responding police, believing the inquiry to be part of a simple accident investigation. Take the motorist involved in an accident who admits to being distracted by a ringing cell phone, or failing to see the traffic signal change color because he or she was consulting the navigation device. Incriminating statements can transform an accident into a crime. Likewise, the existence of event data recorders, or "black boxes", embedded in vehicles of often unsuspecting owners, can provide the police with the evidence necessary to bring a criminal charge by revealing the actual speed, braking, steering, and other data about vehicle's operation prior to the crash. Few motorists understand important protections such as their right to consult an attorney or remain silent as to their conduct or law enforcement's obligation to get a search warrant before obtaining the vehicle's black box. Instead, drivers often consent to turn over evidence or offer information that then is used against them to support a criminal charge that is not hard to initiate under the law.

One need only look to New Jersey's Criminal Code to understand that any traffic accident resulting in personal injury or death can easily evolve into a serious criminal matter. The law does not require that the driver have intent to harm anyone at all. Instead, the law only requires that reckless operation of the vehicle cause the death or injury. The vehicular homicide statute, N.J.S.A. 2C:11-5a, very simply provides that "criminal homicide constitutes vehicular homicide when it is caused by driving a vehicle or vessel recklessly." Likewise, assault by auto occurs, under N.J.S.A. 2C:12-1c, "when the person drives a vehicle or vessel recklessly and causes either serious bodily injury or injury to another." The law allows a jury, depending on the charge, to draw an inference of recklessness upon proof that the driver was intoxicated, using a hand-held wireless device,

operating after being awake for 24 hours or more, or engaging in aggressive driving, such as “unexpectedly altering speed,” “erratic traffic lane changes,” or “following another vehicle too closely.”

The penalties are harsh. Vehicular homicide is a second-degree offense, carrying 5 to 10 years in jail and mandating that 85% of that sentence be served in State prison. Even more severe is the possibility that the police will charge, or the prosecutor will seek, an indictment for aggravated manslaughter, a crime of the first degree, which carries a penalty of 10 to 30 years in prison. This jump to aggravated manslaughter is often used as a tactic to induce plea negotiations and requires only an additional allegation that the circumstances “manifested an extreme indifference to the value of human life.” N.J.S.A. 2C:11-4. In a tragic instant, a motorist with no hint of malicious intent can face a first degree homicide charge for reading a text or nodding off behind the wheel.

Without a doubt, accident prevention by responsible driving is the best way to save lives and avoid this nightmare scenario. The best way to avoid a collision is to be attentive and alert, and put those cell phones down. But if an automobile accident triggers a criminal investigation, it is important to understand that there are challenges and defenses to be asserted. It is not as simple as the statute’s language makes it sound to prove guilt. With all the media attention to the tragic crash that injured Tracy Morgan, very little attention has been paid to the issue of causation. Whether the fatigue was the actual cause remains to be seen. The mere fact that the trucker was admittedly awake for 24 hours does not automatically prove that his conduct caused the accident, as is required under the law. Early investigation, including thorough accident reconstruction by the defense, is often essential to challenging the pivotal issues of recklessness and causation. Challenges to black box data, on-scene admissions, and other evidence can be crucial, and criminal defense attorneys experienced in this area can make all the difference.

Practice

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