

## Motor Vehicle Offenses Resulting in Death

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## Homicide

- First degree murder
- Second degree murder
- Involuntary manslaughter
- Felony death by vehicle
- Aggravated felony death by vehicle
- Repeat felony death by vehicle
- Misdemeanor death by vehicle

## First Degree Murder

- First Degree Murder
  - Requires intent to kill
  - Or intent to commit specified felony (felony murder)
    - Culpable negligence is insufficient intent for first degree murder
    - So felonies predicated on a DWI that causes death do not establish first degree murder

## Second Degree Murder

- Second Degree Murder
  - Killing another human being with malice
  - What is malice in context of a driving offense that causes death?
    - A showing that defendant had the intent to perform the act of driving in such a reckless manner that reflects the knowledge that injury or death would likely result, thus evidencing depravity of mind

## For example

- DWI resulting in death and
  - Driving by the defendant with a revoked license and with a previous DWI conviction
  - BAC of .113 three hours after accident; driving into victim's lane of travel; previous DWI and driving after consuming conviction; pending charges of DWI and DWLR
  - Substantially impaired; prior DWI convictions; driving while license revoked; using false license tags and inspection sticker obtained by lying to inspection personnel
  - Driving away after fighting with bar proprietor; passing car in no passing zone, striking a motorcycle; driving through red light into intersection at 60 miles per hour

## Involuntary Manslaughter

- Common law offense
- Killing another person by
  - An unlawful act that does not amount to a felony and is not ordinarily dangerous to human life or
  - By a culpably negligent act or omission
- DWI is intentional, willful or wanton violation of a safety statute designed for protection of human life
  - Thus, it is culpable negligence to commit DWI
- Driving while impaired and proximately causing the death of another is involuntary manslaughter
- But offense not limited to DWI

### Involuntary Manslaughter

- Class F felony
- If convicted of involuntary manslaughter and felony death by vehicle (Class D felony), person may only be sentenced for felony death by vehicle

### Felony Death by Vehicle

- Driving while impaired that proximately causes the unintentional death of another person
- Note that this is limited to DWI and commercial DWI
  - Does not include other types of motor vehicle offenses
- Class D felony

### Aggravated Felony Death by Vehicle

- Felony death by vehicle committed by a person previously convicted of an offense involving impaired driving
  - Prior conviction must be within 7 years of instant offense
- Class D felony, punished in aggravated range

### Repeat Felony Death by Vehicle

- Felony death by vehicle by a person who has a previous conviction for felony death by vehicle, aggravated felony death by vehicle, or murder based on the unintentional death of another person while engaged in impaired driving
- Class B2 felony

### Misdemeanor Death by Vehicle

- Violation of a traffic law or ordinance (other than DWI) that proximately but unintentionally causes the death of another
- Class A1 misdemeanor

### Scenario 1

Do you issue warrant for arrest for  
DWI?

- A. Yes
- B. No



Do you issue warrant for arrest for  
felony death by vehicle?

- A. Yes
- B. No



- Any other charges?
- Need any additional facts?

Scenario 2

Do you issue warrant for arrest for  
felony fleeing to elude?

- A. Yes
- B. No



Do you issue warrant for arrest for  
misdemeanor death by vehicle?

- A. Yes
- B. No



- Any other charges?
- Need any additional facts?

### Scenario 3

Do you issue warrant for arrest for felony fleeing to elude?

- A. Yes
- B. No



Do you issue warrant for arrest for misdemeanor death by vehicle?

- A. Yes
- B. No



- Any other charges?
- Need any additional facts?

### Scenario 4

Do you issue criminal summons for misdemeanor death by vehicle?

- A. Yes
- B. No



- Any other charges?
- Need any additional facts?