

## Re-examine the Definition of Reckless Driving

Whatever happens to settle the criminal case against Dorj\*, there will still be lingering questions about how such investigations are handled. Are they viewed merely as accidents which were unfortunate but unavoidable? Or will they be looked at more closely?

Will enforcement officials be held accountable for their responsibility **to investigate and uphold** the rules, regulations, and laws which govern the trucking industry? Will truck drivers and their companies be held accountable for their responsibility **to follow** rules, regulations, and laws which govern the trucking industry (as well as those pertaining to all drivers in this country)?

In particular, I am plagued by the limitations of the laws in Georgia (as well as many other states) which refer to certain behaviors and actions of drivers as “reckless” and others as “negligent” and assign consequences accordingly.

In Georgia, homicide by vehicle is either second degree (a misdemeanor) or first degree (a felony). Obviously, the two are normally accompanied by different consequences. In order for it to be considered first degree, the homicide must meet one of these criteria\*\* :

- Unlawfully overtaking a school bus,
- leaving the scene of an accident,
- reckless driving,
- DUI,
- or fleeing and eluding law enforcement.

First of all, Driving While Fatigued (DWF) can impair a driver as much or more than DUI. And, as far as I can see, no steps were taken to analyze whether Dorj was driving while fatigued.

Secondly, the definition of reckless driving includes knowingly taking actions which put others at risk of injury or death—a reckless disregard for the safety of others. \*\*\*

### Definition of Reckless Driving Under Georgia Law

Under O.C.G.A. § 40-6-390, **reckless driving is defined as driving a vehicle in a manner that shows reckless disregard for the safety of person or property.** The courts in Georgia have found that “[t]he offense of reckless driving may be committed in a variety of ways, and whether a defendant's manner of driving under the circumstances demonstrated a reckless disregard for the safety of others is a question that is reserved for the jury.” *Bautista v. State*, 305 Ga.App. 210, 212(1), 699 S.E.2d 392 (2010).

( <http://www.bvslawfirm.com/library/trusted-atlanta-reckless-driving-defense-lawyer.cfm> )

It seems to me that the definition of reckless driving needs to be re-examined particularly in relationship to truck drivers, who are entering the roadway with a monstrous vehicle capable of killing a person. The Georgia State Patrol, by the submission of the SCRTE Report on Dorj and support of the three charges on Dorj (failure to maintain lane and two counts of homicide by vehicle, second degree), are indicating that they do not consider his behavior to be reckless but rather negligent.

They are saying that driving without a seatbelt, driving without his headlights on in rainy conditions, having his brakes in disrepair, and apparently driving without keeping log books is not reckless. I disagree. I think that those behaviors were indicative of a pattern of behavior as a truck driver which

showed a blatant disregard for the safety of others and ultimately ended up in taking the life of my daughters, AnnaLeah (17) and Mary (13). I think that that was reckless driving.

Furthermore, I am concerned that, by looking away (the “GM nod”), the enforcement and legal systems are condoning such behavior and contributing to the problem. I appeal to higher authority to bring this appalling injustice to an end, to properly define such behavior by law, and to hold truck drivers and trucking companies responsible for their actions with consequences which will both change their behavior and act as a deterrent to others. By so doing, they may in fact save lives.

Marianne Karth, August 8, 2014

\* This is what we were told by our attorney, Rob Register, on October 24, 2013 (after having received the SCRT Report):

“I spoke with the assistant DA, Michael Fulcher, today. Now that the SCRT report is filed, the first step is an accusation (similar to an indictment). Mr. Fulcher has prepared the accusation in this case and will be filing it in the next few days. Dorj is charged with failure to maintain lane and two counts of 2nd degree vehicular homicide. 2<sup>nd</sup> degree vehicular homicide is a misdemeanor and is not a felony.

Mr. Fulcher explained to me that **the only way they can charge someone with 1<sup>st</sup> degree vehicular homicide (which is a felony) is if the driver was also charged with: (1) DUI, (2) reckless driving, (3) hit and run, (3) passing a school bus, or (5) fleeing or eluding.**

Because Dorj was not found in violation of any of the above, the most they can charge him is 2<sup>nd</sup> degree vehicular homicide.

Once the case is accused, it will be set for an arraignment hearing. Arraignment is where the defendant enters a plea of not guilty or guilty.

If he pleads not guilty, the case will be placed on the next misdemeanor trial calendar. Mr. Fulcher tells me that would be in the Spring of 2014.

If he enters a guilty plea, the court will schedule a hearing for sentencing. Most likely, his attorney will waive arraignment and enter a plea of not guilty and then try to negotiate a plea or prepare the case for trial.

Mr. Fulcher assured me that if a guilty plea is entered or negotiated, he would make sure to inform us so that you would have the opportunity to attend the hearing if you wish to do so.

I asked him what range of punishment he would expect under similar circumstances, and he informed me that if the defendant showed remorse, accepted responsibility and entered a guilty plea, he would expect a sentence that included the following: approximately 24 months probation, a fine, community service, and mandatory classes.

If the defendant denied the charges, fought the charges, and went to trial and was convicted, he expects the judge would sentence Dorj to jail time. He could not predict how much, but by law it would be no more than 36 months and probably much less.”

\*\* <http://popdejure.com/tag/vehicular-homicide/>

“Many will be surprised to know that vehicular homicide in Blaylock’s case is a misdemeanor (2nd Degree Vehicular Homicide). He will face confinement of up to 12 months, a fine of up to \$1,000.00, or both. Georgia has felony vehicular homicide, but it does not appear that Blaylock’s case falls under that subsection. Under Georgia law, a person can be charged with felony homicide by vehicle if, they caused the death of another person while committing certain traffic offenses. The traffic offenses that make homicide by vehicle a felony (1st Degree Vehicular Homicide) are unlawfully overtaking a school bus, leaving the scene of an accident, reckless driving, DUI, or fleeing and eluding law enforcement. Malice aforethought, or intent to kill is not necessary. See [O.C.G.A. § 40-6-393](#). If a person is convicted of homicide by vehicle in the 1st degree (felony), they can be sentenced to 3 to 15 years in prison.

Mookie Blaylock was not charged with any of the above-listed traffic offenses (yet), so it appears he will face the misdemeanor homicide by vehicle. However, I am almost certain that he will face severe civil penalties from the wrongful death lawsuit that I am sure the family of the deceased will be filing.”

\*\*\* <http://www.dui.info/vehicular-homicide>

“Vehicular Homicide in Georgia Can Be Both a Felony and a Misdemeanor:

Generally, misdemeanor grade vehicular homicide happens when a death is the result of a violation of basic traffic laws. Conviction of a misdemeanor vehicular homicide charge may warrant a sentence from a Georgia judge of up to one year. A example of how this can happen is a death as a result of a speeding violation or failure to maintain lane or following too closely. If someone is unfortunately killed as a result of regular traffic offenses, they can be charged with misdemeanor vehicular homicide.

A felony grade vehicular homicide charge occurs when a death is the result of DUI or reckless driving. Convictions of felony grade vehicular homicide may warrant up to 15 years in prison. The prosecution in Georgia is the Office of the Solicitor-General who generally prosecutes misdemeanor charges in State Court, and the Office of the District Attorney, who generally prosecutes felony charges in Superior Court.”