

## **CAN A PRIVATE CORPORATION BE HELD LIABLE FOR THE CRIME OF HOMICIDE?**

*Commonwealth v. McIlwain School Bus Lines*

Superior Court of Pennsylvania, 1980

283 Pa. Super. 1, 423 A.2d 413

This is an appeal by the Commonwealth from an order quashing an information. The principal issue is whether a private corporation may be held criminally liable for homicide by vehicle. On April 3, 1978, a school bus owned by the McIlwain School Bus Lines, Inc. [hereinafter, the corporation] and operated by one of its employees, ran over and killed 6-year-old Lori Sharp; she had just gotten off the bus and was walking in front of it when she was run over. On May 26, 1978, the corporation was charged with homicide by vehicle. The corporation waived its right to a preliminary hearing, but subsequently filed a motion to quash the information against it. One ground of the motion was that the statute defining the offense of homicide by vehicle did not apply where the particular regulation

allegedly violated involved the equipment required on a vehicle (its front and rear view mirrors) and not the operation of the vehicle. A second ground of the motion was that by definition, the offense could only be committed by a natural person, not by a corporation. By order filed on March 16, 1979, the lower court granted the corporation's motion to quash. The court did not rule on the first ground of the motion. Instead, the court held, *sua sponte*, that the information issued against the corporation was insufficient. The court did not rule on the second ground of the motion, and held, as argued by the corporation, that the offense of homicide by vehicle could not be committed by a corporation. . . .

The criminal law has not always regarded a corporation as subject to criminal liability. Indeed, it was once widely accepted that a corporation was incapable of committing a criminal offense.

This doctrine of non-liability for crime arose from the theory that a corporation, being an intangible entity, [*New York Cent. & H. River R. Co. v. United States*, 212 U.S. 481, 29 S. Ct. 304, 53 L. Ed. 613; *Sutton's Hospital Case*, 10 Coke 23, 32], could neither commit a crime nor be subjected to punishment, because any illegal act of a corporate agent was done without authority of the corporation and *ultra vires*. [*Music Box, Inc. v. Mills*, 10 La. App. 6765, 121 S. 196] [10 *Fletcher Cyc. Corp.* § 4942 (Perm. Ed. 1978) p. 620.]

Today, however, it is generally recognized that a corporation may be held criminally liable for criminal acts performed by its agents on its behalf. See, e.g., *United States v. Wise*, 370 U.S. 405, 82 S. Ct. 1354, 8 L. Ed. 2d 590 (1962) (conspiracy, violation of Sherman Act); *United States v. Johns-Manville Corporation*, 231 F. Supp. 690 (E. D. Pa. 1964) (antitrust, conspiracy); *People v. Schomig*, 74 Cal. App. 109, 239 P. 413 (1925) (violation of legislation regulating real estate brokerages); *West Valley Estates, Inc. v. Florida*, Fla. App., 286 So. 2d 208 (1973) (violation of statute proscribing dredging of lands); *Southern Ry. Co. v. State*, 125 Ga. 287, 54 S.E. 160 (1906) (violation of state penal code re: operation of passenger cars); *State v. Adjustment Dept. Credit Bureau, Inc.*, 94 Idaho 156, 483 P.2d 687 (1971) (extortion); *People v. Duncan*, 363 Ill. 495, 2 N.E.2d 705 (1936) (violation of Motor Fuel Tax Act); *Golden Guernsey Farms v. State*, 223 Ind. 606, 63 N.E.2d 699 (1945) (violation of Uniform Food, Drug & Cosmetic Act); *G. & H. Cattle Co. v. Commonwealth*, 312 Ky. 315, 227 S.W.2d 420 (1950) (nuisance, pollution); *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294, 52 N.E. 445 (1898) (criminal contempt); *State v. Worker's Socialist Pub. Co.*, 150 Minn. 406, 185 N.W. 931 (1921) (criminal syndicalism); *Department of Health of State of New Jersey v. Borough of Fort Lee*, 108 N. J. Eq. 139, 154 A. 319 (1931) (criminal contempt); *People v. Canadian Fur Trappers' Corp.*, 248 N.Y. 159, 161 N.E. 455 (1928) (larceny); *Hardeman King Co. v. State*, 29 Okl. Cr. 319, 233 P. 792 (1925) (violation of laws re: selling agricultural seeds); *Commonwealth v. American Baseball Club of Philadelphia*, 290 Pa. 136, 138 A. 497 (1927) (violation of Sunday laws); *Love v. Nashville Agricultural & Normal Institute*, 146 Tenn. 550, 243 S.W. 304 (1922) (nuisance); *Postal Tel. Cable Co. v. City of Charlottesville*, 126 Va. 800, 101 S.E. 357 (1919) (violation of intrastate telegraph laws); *Vulcan Last Co. v. State*, 194 Wis. 636, 217 N.W. 412 (1928) (attempt to influence votes of employees in referendum election).

As early as the 1860s Pennsylvania courts have recognized that a corporation may be subject to criminal liability. Corporations in Pennsylvania have been indicted or convicted of maintaining public nuisances, unlawful manufacture or possession of intoxicating liquors, violation of Sunday laws, and violation of the Unlawful Collection Agency Practices Act. For a time, the Pennsylvania courts were unwilling to extend corporate criminal liability to crimes involving specific intent or homicide. In *Commonwealth v. Punxsutawney*, 24 Pa. C. C. 25, 48 Pittsb. Leg. J. 42 (1900), the court of common pleas of Jefferson County refused to hold a street railway company criminally liable for the crime of assault in ejecting a passenger.

Some courts have shown a tendency to enlarge on the criminal liability of corporations but no court has gone as far as we are urged to go in this case. Hence, not a single case is to be found to sustain this indictment. We should make haste slowly when it is in the direction of holding either an individual or a corporation criminally liable for a crime committed by an employee without his or its knowledge or consent. Moreover, the criminal act here alleged is so far ultra vires as to contravene all the accepted rules in the criminal law for making it the act of the principal. 48 P.L.J. at 42.

And in *Commonwealth v. Peoples Natural Gas Co.*, 102 P.L.J. 348 (1954), the court of common pleas of Allegheny County granted a corporation's motion to quash an indictment charging involuntary manslaughter, then the common law offense; the court reasoned that the phrase, "the killing of another," implied that the killer had to be of the same nature as the killed ("another"). Courts in other jurisdictions, however, have abandoned this limitation.

For example, the Supreme Court of New Jersey has held that a corporation may be held criminally liable for involuntary manslaughter. In *State v. Lehigh Valley R. Co.*, 90 N.J.L. 372, 103 A. 685 (1917), in denying a corporation's motion to quash an indictment for involuntary manslaughter, the court said:

"It has long been settled in this state that a corporation aggregate may in a proper case be held criminally for acts of malfeasance as well as for nonfeasance. *State v. Morris and Essex Railroad Co.*, 23 N.J. Law 360; *State v. Passaic County Agricultural Society*, 54 N.J. Law 260, 23 Atl. 680. So well settled is the general rule that in the later cases it has not even been questioned. *States [State] v. Erie Railroad Co.*, 83 N.J. Law 231, 84 Atl. 698; *Id.* 84 N.J. Law 661, 87 Atl. 141, 46 L.R.A. 117, *State v. Lehigh Valley Railroad Co.*, 89 N.J. Law 48, 97 Atl. 786; *Id.* 90 N.J. Law 340, 100 Atl. 167. [90 N.J. Law at 373, 103 A. at 685.]"

The court went on to say that "[w]e can think of no reason why it [the corporation] should not be held for the criminal consequences of its negligence or its nonfeasance." 90 N.J. Law at 374, 103 A. at 686. In *United States v. Van Schaick et al.*, 134 F.592 (C.C.S.D.N.Y. 1904), the court held that a corporate owner of a steam vessel could be guilty of manslaughter for "fraud, connivance, misconduct or violation of the law" resulting in loss of life. The charge was that as owner, the corporation had failed to equip the vessel with life preservers and fire fighting equipment. In *People v. Ebasco Services, Incorporated et al.*, 77 Misc. 2d 784, 354 N.Y.S.2d 807 (1974), the Supreme Court of New York (Queens County) held that a corporation could be guilty of negligent homicide. The court held that although the statute's use of the word "person" in referring to the victim of a homicide naturally meant a human being, the statute did not require that the "person" committing the act of homicide also be a human being.

There is, however, no manifest improbity in applying the broader definition of "person" to a corporation in regard to the commission of a homicide particularly in view of the statement by the *Court of Appeals in People v. Rochester Railway & Light Co.* (*supra*) that the Legislature is empowered to impose criminal liability upon a corporation for a homicide. Accordingly, the court concludes that although a corporation cannot be the victim of a homicide, it may commit that offense and be held to answer therefore. [77 Misc. 2d at 787, 354 N.Y.S.2d at 811.]

The law of Pennsylvania has developed in a manner consistent with these New Jersey and New York decisions. With the enactment of the Crimes Code, Act of Dec. 6, 1972, P.L. 1482, No. 334, § 1 *et seq.*, eff. June 6, 1973, 18 Pa. C.S.A. § 101 *et seq.*, the criminal liability of corporations was codified, as follows:

- (a) *Corporations generally.*—A corporation may be convicted of the commission of an offense if:
  - (1) the offense is a summary offense or the offense is defined by a statute other than this title in which a legislative purpose to impose liability

on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply;

- (2) the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
- (3) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment.

(b) *Corporations, absolute liability.*—When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation shall be assumed, unless the contrary plainly appears. 18 Pa.C.S.A. § 307(a) and (b).

We recently had occasion to apply this provision, in *Commonwealth v. J. P. Mascaro and Sons, Inc.*, 266 Pa. Super. 8, 402 A.2d 1050 (1979), where we held that under subsection (a)(3) of section 307, a corporation could be convicted of theft by deception, deceptive business practices, and unsworn falsification to authorities arising out of false reports pertaining to rubbish hauled pursuant to a contract between the corporation and a county. Cases such as *Commonwealth v. Punxsutawney*, *supra*, and *Commonwealth v. Peoples Natural Gas Co.*, *supra*, therefore no longer have any precedential value.

When section 307 of the Crimes Code is applied to the present case, it is apparent that the critical words are that “[a] corporation may be convicted of the commission of an offense if: (1) the offense is . . . defined by a statute other than this title in which a legislative purpose to impose liability on corporations plainly appears. . . .” 18 Pa. C.S.A. § 307(a)(1). Here, the offense—homicide by vehicle—is “defined by a statute other than [the Crimes Code]”; it is defined by the Vehicle Code, Act of June 17, 1976, P.L. 162, No. 81, § 1, eff. July 1, 1977, 75 Pa. C.S.A. § 3732. The question that we must decide, therefore, is whether from that definition “a legislative purpose to impose liability on corporations plainly appears.”

The statute provides that homicide by vehicle may be committed by “[a]ny person who unintentionally causes the death of another person while engaged in the violation of . . . [etc.].” (Emphasis added.) Section 102 of the Vehicle Code defines “person” as “[a] natural person, firm, co-partnership, association or corporation.” 75 Pa. C.S.A. § 102. It therefore “plainly appears” that homicide by vehicle may be committed by a corporation. This conclusion is made even more plain by the opening paragraph of Section 102, which provides:

“Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the content clearly indicates otherwise, the meanings given to them in this section [75 Pa. C.S.A. § 102.]”

“Person” is one of the “following words” thus referred to. There are no “additional definitions” of “person” in Section 3732, defining homicide by vehicle. Therefore, “unless the content [of Section 3732] clearly indicates otherwise [emphasis added],” the meaning given “person” in Section 3732 shall be the meaning given it in Section 102, i.e., as including a corporation.

The lower court acknowledged that Section 102 defined "person" as including a corporation, but held, nevertheless, that as used in Section 3732, "person" did not include a corporation. Said the court:

"If 'person' was to include a corporation, Section 3732 semantically and grammatically should have read 'any person who or which unintentionally causes the death. . . .' In modern usage *who* refers to actual persons (human beings). *Which* refers to the unnatural, artificial or inanimate as a corporation. [Webster's Collegiate 5th Edition Dictionary.]

The Latin 'qui' means *who* referring to the natural or human, and 'quod' means *which* referring to the unnatural, artificial or inanimate. (The New Century Dictionary Foreign Words and Phrases) [Slip op. at 3.]"

We are not persuaded by this reasoning. Initially, it may be noted that the argument from Latin is not persuasive, for reference to another language would have shown that the word for "who" and the word for "which" may be the same. Nor is the argument from grammar persuasive; indeed, it cuts just the other way. The phrase, "any person who or which," is not only extremely awkward but sounds wrong, for in ordinary usage, "person" refers only to a natural person and therefore takes only "who," not "which." Accordingly, no legislative draftsman wants to resort to the phrase, "any person who or which." Instead, the draftsman will make a choice. One choice is to avoid definitions. With respect to the Vehicle Code, that would mean that throughout the statute there would appear the phrase, "Any natural person, firm, co-partnership, association or corporation who or which . . . [does one of the many acts proscribed by the Code]." This is clear but cumbersome. A second choice, therefore, is to avoid being cumbersome by using one word instead of many, and still be clear by giving that one word a definition that includes the many. This is the choice usually made when the statute in question is long and divided into many sections. Here, the draftsman of the Vehicle Code made this second choice. Having done so, he wished to be grammatical, and not offend the reader with an awkward phrase. He therefore said, "Any person who . . .," knowing that by reference to the definitions in Section 102, the reader could learn what "person" referred to, and did not say, "Any person who or which . . .," which would not only be awkward and sound wrong, but because of Section 102, was unnecessary.

Other jurisdictions have similarly applied criminal statutes defining the word "person" as including corporation. For example, in *Vulcan Last Co. v. State*, 194 Wis. 636, 217 N.W. 412 (1928), the Supreme Court of Wisconsin held that a corporation is liable to prosecution under a statute prohibiting any "person" from attempting to influence a voter, where the statute provided that "person" included a corporation. In *State v. Workers' Socialist Pub. Co.*, 150 Minn. 406, 185 N.W. 931 (1921), the Supreme Court of Minnesota held that a corporation was criminally liable under a statute prohibiting "any person" from advocating violence to gain political ends, where the statute provided that the word "person" included a corporation. See also *State v. Adjustment Dept. Credit Bureau, Inc.*, 94 Idaho 156, 483 P.2d 687 (1971); *Paragon Paper Co. v. State*, 19 Ind. App. 314, 49 N.E. 600 (1898).

The lower court also gave the following reasons for its decision:

"The Homicide by Vehicle Section 3732 nowhere contains the word corporation: no Pennsylvania courts have applied this section to corporations; the penalty of the section providing jail is not corporately oriented; the revocation of one's license is not corporately applicable; and the section (as with the entire Vehicle Code Serious Offense Section 3731 to 3734, inclusive) is strictly natural person solely operational driver oriented. [Slip op. at 2.]"

It is true that Section 3732 does not use the word "corporation." However, given the definition of the word "person," there is no need for it to do so. It is also true—at least so far as we know—that no court in Pennsylvania has applied Section 3732 to a corporation; the present case appears to be of first impression. However, given the fact that the section did not become effective until July 1, 1977, the fact that no case other than this one has been brought against a corporation for homicide by vehicle is hardly conclusive proof that the section may not be so applied. Neither are we persuaded by the next two reasons of the lower court—that since a corporation cannot be put in jail or have its license revoked, Section 3732 does not apply to corporations.

The offense of homicide by vehicle is a misdemeanor of the first degree. 75 Pa. C.S.A. § 3732. It is true that one of the punishments that may be imposed for committing a misdemeanor of the first degree is a term of imprisonment:

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

"(1) Five years in the case of a misdemeanor of the first degree. [18 Pa. C.S.A. § 1104.]"

It is also true that another possible punishment for homicide by vehicle is the revocation of one's driving license:

The department shall revoke the operating privilege of any driver for one year upon receiving a certified record of the driver's conviction of any of the following offenses: . . . Section 3732 (relating to homicide by vehicle). 75 Pa. C.S. 1532(a)(3).

However, a third possible punishment is the imposition of a fine:

"A person who has been convicted of any offense may be sentenced to pay a fine not exceeding:

- (1) . . . . .
- (2) . . . . .

"(3) \$10,000, when the conviction is of a misdemeanor of the first degree. [18 Pa. C.S.A. § 1101.]"

Where alternate punishments are provided for a crime, the court may in appropriate circumstances impose the fine only:

"Fine only.—The court may, as authorized by law, sentence the defendant only to pay a fine, when, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices. [18 Pa. C.S. § 1326(a).]"

In *United States v. Hougland Barge Line, Inc.*, 387 F. Supp. 1110 (W. D. Pa. 1974), the court held that a statute requiring any "person in charge" of a vessel to notify the United States Coast Guard of oil discharges from the vessel applied to corporations as well as individuals, and that when applied to a corporation, only a fine may be imposed:

"The defendant also argues that as a corporation it cannot be imprisoned, and therefore, this would indicate that it [the statute in question] was not intended to apply to corporations. Innumerable federal penal statutes prohibit certain activities, including business entities, and provide penalties for violation of such prohibited acts. Both individuals and corporations are penalized even though a corporation may not be imprisoned. Thus, as illustrated by antitrust cases and Internal Revenue cases, where a statute calls for imprisonment, when imposed against a defendant corporation, only the fine portion of the penalty may be imposed. *United States v. Hilton Hotel [Hotels] Corporation, supra* [467 F.2d [1000] (9th Cir. 1972) cert. Denied, 409 U.S. 1125, [93 S. Ct. 938, 35 L. Ed. 2d 256] (1973)]; *United States v. Swift & Company*, 189 F. Supp. 885(D. C. Ill. 1960), affirmed, 367 U.S. 909, 81 S. Ct. 1918, 6 L. Ed. 2d 1249 (1961). [387 F. Supp. at 1114.]"

Courts in other jurisdictions have similarly applied this principle, recognizing that to do otherwise would in effect confer upon the corporation immunity for its criminal acts. Thus, the Supreme Court of Illinois has said:

"Where the statutory penalty is both fine and imprisonment, the corporate offender can be punished by imposing a fine, inasmuch as the two penalties are independent. *United States v. Union Supply Co.*, [215 U.S. 50, 30 S. Ct. 15, 54 L. Ed. 87] *supra*; 7 R.C.L. § 784. The theory is that a court shall apply the appropriate penalty in such instances as far as possible, in order that the corporate defendant shall not escape all punishment. [*People v. Duncan*, 363 Ill. 495, 2 N.E.2d 705 (1936).]"

The Supreme Court of North Carolina has said:

"It is true that, when the statute imposes a penalty of a fine or imprisonment, only the fine can be placed upon a corporation. But this is no reason why that should not be imposed. The corporation should not be wholly exempted from punishment, because it cannot be imprisoned. . . . *State v. Ice & Fuel Co.*, 166 N.C. 366, 369, 81 S.E. 737, 738 (1914)."

And in *United States v. Van Schaick et al., supra*, the Circuit Court for the Southern District of New York reached a similar conclusion:

"But it is said that no punishment can follow conviction. This is an oversight in the statute. Is it to be concluded, simply because the given punishment cannot be enforced, that Congress intended to allow corporate carriers by sea to kill their passengers through misconduct that would be a punishable offense if done by a natural person?"

A corporation can be guilty of causing death by its wrongful act. It can with equal propriety be punished in a civil or criminal action. It seems a more reasonable alternative that Congress inadvertently omitted to provide suitable punishment for the offense when committed by a corporation, than it intended to give the wrongdoer impunity simply because it happened to be a corporation. 134 F. at 602.

Finally, we are unable to accept the lower court's conclusion that Section 3732 "is strictly natural person solely operational driver oriented." For the reasons we have given, it appears to us equally to include corporations.

Reversed.

[footnotes omitted]