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RECKLESS DRIVING—IS IT A DISTINGUISHABLE OFFENSE?

Don H. Reuben

Some form of a reckless driving statute is to be found in every state in the union.¹ In defining the offenses included within these statutes, one is met with the immediate difficulty that vehicle codes purport to specifically cover most acts which are of a "reckless" or "careless" nature. However, the reckless driving statutes must be given a definite and discernible meaning if they are to serve some purpose other than to increase a particular motorist's punishment by being included as an additional offense whenever it is found he has violated several "specific offense" statutes.² It is the scope of this note to examine the several types of statutes now employed, the convictions obtained under them, and give some attention to their interplay with the manslaughter and negligent homicide statutes.

STATUTES IN USE TODAY

The several states employ statutes that fall into three readily distinguishable groups. The first group of statutes, typified by the Uniform Traffic Code reads: "Any person who drives any vehicle in *willful* or *wanton* disregard for the safety of persons or property is guilty of reckless driving."³ This form of language is found in some fifteen state statutes.⁴

The second group of statutes, also presently in force in about fifteen

1. Alabama: ALA. CODE 1940, Title 36 §3; Arizona: ARIZ. CODE ANN. 1939, §66-403; Arkansas: ARK. STAT. 1947, 15-702; California: CAL. VEHICLE CODE §505 (Deering 1948); Colorado: COLO. STAT. ANN. 1935 c16 §188; Connecticut: CONN. GEN. STAT. 1949, c110 §2408; Delaware: DEL. REV. CODE 1935, §5621; Florida: FLA. STAT. ANN. (1943), §317.21; Georgia: GA. CODE ANN. (1936), Supp. (1947) §68-9919; Idaho: IDAHO CODE 1947, §49-503; Illinois: SMITH-HURD'S ILL. ANN. STAT. 1936 c95½ §145; Indiana: BURN'S IND. ANN. STAT. 1933, §47-2001; Iowa: IOWA CODE ANN. 1946, §321.283; Kansas: KAN. GEN. STAT. 1935, §8-219 §21-2174; Kentucky: KY. REV. STAT. 1935 §189.290; Louisiana: DARTS. LA. CRIM. CODE 1943, Art. 740-99; Maine: ME. REV. STAT. 1944, c19 §119; Maryland: MD. CODE 1939, 1943 Supp., Art. 56 §196; Massachusetts: MASS. ANN. LAWS 1944, c 90, §24; Michigan: Pub. Acts 1949, Act. #300. This is a re-enactment in toto of the former Michigan provision which is found at MICH. STAT. ANN. 1937, §9.1564; Minnesota: MINN. STAT. 1941, §169-13; Mississippi: MISS. CODE 1942, §8175; Missouri: MO. REV. STAT. ANN. 1942, §8383; Montana: MONTANA REV. CODES 1947, §31-108(6) §53-402; Nebraska: NEB. REV. STAT. 1943, Supp. 1947, §39-7107, §39-7107.02; Nevada: NEV. COMP. LAWS, 1929 §4350; New Hampshire: N. H. REV. LAWS 1942, c116, §12; New Jersey: N. J. REV. STAT. 1937, 39:4-96; New Mexico: N. M. STAT. 1941, §68-503; New York: N. Y. VEHICLE AND TRAFFIC LAW §58 effective July 1, 1950; North Carolina: N. C. GEN. STAT. 1943, §20-140; North Dakota: N. D. REV. CODE 1943, 39:0803; Ohio: PAGE'S OHIO GEN. CODE 1946, §6307-20; Oklahoma: 47 OKLA. STAT. 1941, §121.3j; Oregon: ORE. COMP. L. ANN. 1940, §115.319; Pennsylvania: PURDON'S PA. STAT. ANN. 1941, Tit. 75 §481; Rhode Island: R. I. GEN. LAWS 1938, c88 §4; South Carolina: S. C. CODE 1942 §1616(31); South Dakota: S. D. CODE 1939, §44.9921; Tennessee: WILLIAM'S TENN. CODE 1934, §2681, 2682; Texas: VERNON'S ANN. PENAL CODE, Art. 790, VERNON'S ANN. CIV. STAT. Art. 6687B(22); Utah: UTAH CODE ANN. 1943, 57-7-112; Vermont: STATS. REV. 1947, §10283; Virginia: VA. CODE ANN. 1949, §46-208; Washington: REMINGTON'S WASH. REV. STAT. 1932, §6360-67, 68, 117, 118; West Virginia: W. VA. CODE 1943, 1721(2); Wisconsin: WIS. STATS. 1945, §85.395; Wyoming: WYO. COMP. STAT. 1945, 60:415.

2. It is interesting to note that when the constitutionality of a conviction under a reckless driving statute is tested, it is usually the defendant's claim that the statute does not prescribe reasonably ascertainable standards of guilt. *cf.* *People v. Steel*, 35 Cal. App. 2d Supp. 748, 92 P 2d 815 (1939); *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932).

3. UNIFORM VEHICLE CODE, UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS, Sec. 55 (1948). (Italics supplied.)

4. Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Minnesota, Mississippi, Nebraska, South Carolina, Utah, Wyoming.

states, employs the following terminology: "Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving."⁵

The third category of reckless driving statutes may have wording of the first two categories, but will also enumerate specific acts which constitute reckless driving.⁶ These acts may be "rules of the road" violations, racing with another on a highway, driving without lights, or any of a multitude of possible traffic infractions. Montana, instead of setting out specific acts which constitute reckless driving, has seen fit to call a reckless driver one who violates "two (2) or more of the highway patrol board regulations or of the Montana vehicle code . . . that has caused an accident, or in a manner which indicates a willful disregard for one's own safety or others."⁷

DETAILED EXAMINATION OF "RECKLESS DRIVING" STATUTES

I. Uniform Traffic Act

The phrase, a "willful or wanton disregard for others," as used in the Uniform Traffic Code, gives rise to some difficult problems. The words have been accused of having chameleon like characteristics as they are used to articulate two ideas which are quite close together and may at times overlap.⁸ At times courts have stated that wantonness is failure to use ordinary care in a particular situation⁹—wantonness is thus inferentially identified as a form of negligence. In other decisions the same courts have asserted that wantonness "is at least a willingness to inflict injury, a conscious indifference to the perpetration of a wrong"¹⁰—here the term signifies an intentional act.¹¹ From decisions in the Uniform Code states, it would appear that willful and wantonness as used in the reckless driving statutes are given the latter meaning.¹²

Another difficulty with the statute is the use of the disjunctive, "or." The implication is that the statute is aimed at two types of reckless driving—a willful disregard for others, and a wanton disregard for others. This interpretation is fortified by the fact that one state has recently legislatively

5. This is the language of the Alabama Code, ALA. CODE 1940, TITLE 36 §3. Other states following this pattern are Arizona, Idaho, Louisiana, Michigan, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Wisconsin.

6. The following fifteen states have language along this line: Connecticut, Delaware, Indiana, Maryland, Massachusetts, Missouri, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania, Tennessee, Vermont, Virginia, Washington.

7. MONTANA REV. CODES 1947, §31-108(6) §53-402.

8. Note, 92 U. PA. L. REV. 431 (1944).

9. Frederick v. Philadelphia Rapid Transit Co., 337 Pa. 136, 10 A 2d 576 (1940); Cover v. Hershey Transit Co., 290 Pa. 551, 139 A 266 (1927).

10. Kasanovich v. George, 348 Pa. 199, 203, 34 A 2d 523, 525 (1943). See also Bowman v. Pennsylvania RR., 299 Pa. 558, 149 A 877 (1930).

11. The problems involved because of the various meanings that have grown about the term "willful and wanton" are discussed fully in 92 U. PA. L. REV. 431 (1944), where the note is appropriately titled, *Those Weasel Words—"Willful and Wanton."*

12. State v. Bolsinger, 221 Minn. 154, 21 N.W. 2d 480 (1946); Sanford v. State, 195 Miss. 896, 16 S 2d 628 (1944); People v. McNutt, 40 Cal. App. 2d Supp. 835, 105 P 2d 657 (1940); Hastings v. Serleto, 61 Cal. App. 2d 672, 143 P 2d 956 (1943); State v. Jacobsmeir, 229 Iowa 873, 294 N.W. 920 (1935); People v. Boryszewski, 317 Ill. App. 656, 47 N.E. 2d 343 (1943).

re-defined its reckless driving statute so that willfulness is made a higher degree of reckless driving than is wantonness.¹³ The decided cases, however, fail to recognize any distinction between willful and wanton conduct.¹⁴

When a distinction between wanton conduct and willful conduct is drawn it is generally along the following lines: "The distinction between willful and wanton conduct is that between one who casts a missile intending that it shall strike another, or believing that it is certain to strike him, and one who casts it where he has only reason to believe that it is very likely to do so."¹⁵ This distinction is open to criticism. First those who enunciate it, admit that it is strictly a theoretical concept.¹⁶ Secondly, the distinction hinges completely upon the amount of knowledge of possible harm a man has. This is impossible to measure subjectively and if measured in terms of the knowledge a "reasonable man" *should* have, the distinction is destroyed, as knowledge is then measured by an arbitrary standard and not by the actor's. From a practical viewpoint, it would seem unnecessary to draw the distinction, for since by the terms of the distinction, wantonness is a lesser degree of knowledge than is willfulness, all that is necessary to enforce the law is to determine the meaning of wantonness, and any driving evidencing more than wantonness, being at least within the lesser half of the statute, is reckless driving. It is therefore submitted, that decisions in the Uniform Code states demonstrate the statute is directed at only one type of conduct. That conduct is of a type which will very probably create substantial danger to life, limb, or property and a reasonable man can easily perceive it will do so. The intention to have the harm occur is immaterial—only the conscious doing of the act is necessary.¹⁷ The next step is to determine what specific conduct fits that description.

The courts have consistently held that acts which constitute merely negligence sufficient to give rise to a civil suit are not in themselves within the scope of the statute.¹⁸ As a corollary to this, the mere fact that one has had an accident is insufficient to warrant a conviction.¹⁹ Speeding or driving while intoxicated are not *per se* offenses under the statute, but they are circumstances to be considered in determining guilt.²⁰ Even if the individual speeding does so with the motive of evading a police officer, if he does nothing more, a charge of reckless driving is unwarranted.²¹ There is, however, a feeling on the part of some courts that where speed is greatly in excess of the

13. NEB. REV. STAT. 1943, Supp. 1947, §39-7107, §39-7107.02.

14. *Hastings v. Serleto*, 61 Cal. App. 2d 672, 143 P 2d 956 (1943); *People v. McNutt*, 40 Cal. App. 2d Supp. 835, 105 P 2d 657 (1940); Note, 92 U. PA. L. REV. 431 (1944); PROSSER, TORTS, 265 Footnote 95 (Hornbook Series 1941); RESTATEMENT, TORTS, §500 (1934); *State v. Bolsinger*, 221 Minn. 154, 21 N.W. 2d 480 (1946); *Bartolucci v. Falleti*, 382 Ill. 168, 46 N.E. 2d 980 (1943).

15. PROSSER, TORTS, 262-3 (Hornbook Series 1941).

16. *Ibid.*

17. RESTATEMENT, TORTS, §500 (1934); *State v. Bolsinger*, 221 Minn. 154, 21 N.W. 2d 480 (1946); *State v. Hill*, 239 Iowa 675, 32 N.W. 2d 398 (1948); *People v. Mason*, 97 N.Y. Supp. 2d 462 (County Ct. 1950). The intention to have the act occur is proved by the occurrence of the act. *People v. Smith*, 36 Cal. App. 2d Supp. 748, 92 P 2d 1039 (1939). The net result being intent is immaterial if the act in fact does occur.

18. *People v. Anderson*, 310 Ill. 389, 141 N.E. 727 (1923); *People v. McNutt*, 40 Cal. App. 2d Supp. 835, 105 P 2d 657 (1940); *Sanford v. State*, 195 Miss. 896, 16 S. 2d 628 (1944); Note, 86 A.L.R. 1278 (1933).

19. *Ibid.*; cf. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932).

20. Note, 86 A.L.R. 1281 (1933); *Hastings v. Serleto*, 61 Cal. App. 2d 672, 143 P 2d 956 (1943) (60 M.P.H.); *Hall v. Mazzei*, 14 Cal. App. 2d 48, 57 P 2d 948 (1936) (60 M.P.H.); *People v. Anderson*, 310 Ill. 389, 143 N.E. 727 (1923); *Nelson v. Westergaard*, 130 Cal. App. 79, 19 P 2d 867 (1933).

21. *Gause v. State*, 203 Miss. 377, 34 S. 2d 729 (1948).

law, particularly on a well traveled road, the danger to others is so probable that the action is wanton and therefore within the purview of the statute.²²

Weaving between traffic lanes on one's own side of the road, or leaving the road while speeding, are usually not considered reckless acts.²³ However, if the driver weaves between traffic lanes on his side of the road and those on the other side of the road, he has violated the statute.²⁴ Also, where his acts are directed specifically at his fellow motorists, as for instance trying to frighten other drivers, or preventing another motorist from passing and retaliating when the motorist does pass by smashing into him, the holdings are that a violation has occurred.²⁵

It is evident that there is not, nor should there be, a hard and fast rule. Sometimes the commission of a given act will warrant a conviction while at other times and under different circumstances it will not.²⁶ The cases can be harmonized since convictions are sustained only when the actor perceived, or should have perceived, that his acts were highly dangerous. Such a test allows for a flexibility which is vitally needed in this field.

II. *The Due Circumspection States*

The Alabama Code and those akin to it have, in addition to the "willful and wanton" clause, the following provision: "or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."²⁷ Does this type of statute encompass acts not covered in the reckless driving provision of the Uniform Act?

Decisions in the "due circumspection" states assert that the statute embodies two offenses,²⁸ one described by the "willful and wanton" clause, and another described by the "or without due circumspection" clause; but the courts then go on to treat the statute as though only one type of conduct is covered.²⁹ In the few decisions where the courts of these states have

22. *People v. Nowell*, 45 Cal. App. 2d 811, 114 P 2d 81 (1941) (75-85 M.P.H.). "We do not wish to be understood as holding that mere speed may never constitute willful misconduct if indulged in under certain conditions. Willful misconduct, like negligence must relate to the time, place, person and must be measured by them. Excessive speed under some circumstances may amount to negligence, and under still others to willful misconduct." *Hall v. Mazzei*, 14 Cal. App. 2d 48, 51, 57 P 2d 948, 950 (1936).

23. *People v. Thompson*, 41 Cal. App. 2d Supp. 965, 108 P 2d 105 (1940) (Weaving); *Hall v. Mazzei*, 14 Cal. App. 2d 48, 57, P 2d 948, (1936) (Speeding and left the road).

24. *Huff v. State*, 68 Ga. App. 1, 24 S.E. 2d 227 (1943).

25. *Newmans v. State*, 65 Ga. App. 288, 16 S.E. 2d 87 (1941); *State v. Hill*, 239 Iowa 675, 32 N.W. 2d 398 (1948).

26. Compare *People v. McNutt*, 40 Cal. App. 2d Supp. 835, 105 P 2d 657 (1940), and *Newmans v. State*, 65 Ga. App. 288, 16 S.E. 2d 87 (1941), where in each case the defendants had smashed into the auto in front of them. In the *McNutt* case, however, there was a mere failure to keep a look out; the defendant did not see the car. In the *Newmans* case the defendant, over a twenty mile period refused to let the car behind him pass, and when it did pass the defendant immediately overtook the auto and smashed into it. In the former case a conviction was reversed, in the latter sustained.

27. ALA. CODE 1940, TITLE 36 §3.

28. *State v. Folger*, 211 N.C. 695, 191 S.E. 747 (1937); *State v. Rossman*, 64 S.D. 532, 268 N.W. 702 (1936).

29. *State v. Folger*, 211 N.C. 695, 191 S.E. 747 (1937); *State v. Rossman*, 64 S.D. 532, 268 N.W. 702 (1936); *Hill v. State*, 27 Ala. Appeals 202, 169 S. 21 (1936); *State v. Wilson*, 218 N.C. 769, 12 S.E. 2d 654 (1941); *State v. Steelman*, 228 N.C. 634, 46 S.E. 2d 845 (1948); *State v. Holbrook*, 228 N.C. 620, 46 S.E. 2d 843 (1948); *State v. Cody*, 224 N.C. 470, 31 S.E. 445 (1944). In some jurisdictions, notably Connecticut and Massachusetts, the courts have said that driving in a manner so as to endanger life, limb, or property is a different offense than reckless driving and that there are elements in one which are not present in the other. *State v. Andrews*, 108 Conn. 209, 152 A. 840 (1928); *Com. v. Guillette*, 243 Mass. 346, 137 N.E. 700 (1923); *Com. v. Vartanian*, 251 Mass. 355, 146 N.E.

attempted to define the statutes they enunciate a course of conduct identical with that in the Uniform Code states.³⁰ The impelling conclusion is that the statute defines by alternative terminology, identical courses of action—conduct involving both an easily perceptible danger of great harm and a great likelihood it would occur.³¹ And this also seems to be the result reached by the decisions in New York³² under a statute which provides that “Reckless driving shall mean driving a motor vehicle, motorcycle or any other vehicle propelled by any power other than muscular power or any appliance or accessory thereof *in a manner which unreasonably interferes with the free and proper use of the public highway or unreasonably endangers users of the public highway.*”³³

Once an attempt is made to break down the various clauses of a statute of the “due circumspection” group, all kinds of interpretive difficulties are encountered, which only confuse the issue. The difficulties of the Pennsylvania lower courts illustrate this. The Pennsylvania statute reads in part: “(a) Reckless driving . . . is . . . the following: Any person who drives any vehicle . . . upon a highway carelessly and willfully, or wantonly disregarding the rights or safety of others, or in a manner so as to endanger any person or property.”³⁴ In *Commonwealth v. Douglas*,³⁵ a Pennsylvania lower court said, “. . . while only one offense is defined it consists of several parts, each one of which is a separate and distinct offense.”³⁶ The same year another Pennsylvania lower court held the above statute described one offense, but with three distinct parts.³⁷ Finally, in *Commonwealth v. Frisch*,³⁸ and *Commonwealth v. Shriver*,³⁹ two different Pennsylvania lower court judges held that the statute described two separate acts with no difference between them—in other words that only one type of conduct was prohibited. This is a common sense approach calculated to avoid the confusion found in the earlier two cases.

682 (1925). Unfortunately, the courts which make the distinction never give an inkling as to which elements are present in each offense so that law enforcement officers are not given any criterion to distinguish the two. This is the minority view as can be seen from the line of cases above. An excellent discussion of the problem can be found in *Com. v. Shriver*, 35 D. & C. 1 (Pa. 1939), where the distinction is rejected.

30. *Ibid*: “We are constrained to hold that the recklessness covered by the statute is an intentional course of conduct wholly disregarding of the rights of others.” *Hill v. State*, 27 Ala. Appeals 202, 203, 169 S. 21, 22 (1936).

31. The only real difference between the two clauses of the Alabama Statute is that the “due circumspection” clause specifically makes it an offense to drive so as to endanger property, while the first clause of the statute does not mention risks to property specifically, but merely asserts it to be reckless to drive, “. . . in wanton disregard of the *rights* or safety of others” (*Italics Supplied*). Rights could probably be interpreted to include acts dangerous to property.

32. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932); *Sheridan v. Fletcher*, 270 App. Div. 29, 58 N.Y.S. 2d 466, (3rd Dept. 1945); *People v. Gardner*, 255 App. Div. 683, 8 N.Y.S. 2d 917 (4th Dept. 1939). *In re Lipschitz*, 259 App. Div. 640, 20 N.Y.S. 2d 299 (1st Dept. 1940); *People v. Byrne*, 90 N.Y.S. 2d 825 (Utica City Ct. 1949); *People v. Mason*, 97 N.Y.S. 2d 462 (County Ct. 1950). But *cf. People v. Moore*, 178 Misc. 750, 36 N.Y.S. 2d 328 (County Ct. 1942), where it is thought the statute embodied three distinguishable offenses within it. This is the only New York case holding this, and it appears to be unnecessary to the decision.

33. N. Y. VEHICLE AND TRAFFIC LAW §58, effective July 1, 1950. (*Italics added.*) The old law contains similar language.

34. PURDON'S PA. STAT. ANN. 1941 TITLE 75 §481.

35. 31 D. & C. 234 (Pa. 1938).

36. 31 D. & C. 234, 235 (Pa. 1938). The definition appears to be internally inconsistent. The court probably meant one offense with three parts.

37. *Commonwealth v. Kline*, 35 D. & C. 19 (Pa. 1938).

38. 41 D. & C. 266 (Pa. 1940).

39. 35 D. & C. 1 (Pa. 1940).

In the "due circumspection" states, as well as in those of the Uniform Code, negligent acts are not within the statute's purview.⁴⁰ The occurrence of an accident is not in itself reckless driving, no matter what the damage may be.⁴¹ The same view toward speed and traffic violations is taken here as was taken in the Uniform Code States.⁴² The "due circumspection" courts, however, are very antagonistic towards a motorist who drives with obstructed vision, almost invariably holding him to be a reckless driver.⁴³

Driving on the left side of the road in order to pass a slower moving vehicle is, of course, not reckless driving.⁴⁴ It must, however, be done carefully, for if done improperly, it is certainly conduct which is sufficiently dangerous to be branded as reckless driving.⁴⁵ Dangerous acts taken in contemplation of another motorist's presence such as a failure to yield when at an intersection and to the left of the complaining motorist,⁴⁶ or the defendant's smashing into the auto in front of his,⁴⁷ are almost invariably held to

40. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932); *People v. Davis*, 9 N.Y.S. 2d 620 (County Ct. 1938); *Seid v. Hartnett*, 256 App. Div. 200, 9 N.Y.S. 2d 426 (1st Dept. 1939); *People v. Sander*, 162 Misc. 41, 292 N.Y.S. 545 (County Ct. 1936); *Prince v. Hartnett*, 256 App. Div. 201, 9 N.Y.S. 2d 414 (1st Dept. 1939); *State v. Rossman*, 64 S.D. 532, 268 N.W. 702 (1936), 86 A.L.R. 1278 (1933).

41. *People v. Grogan*, 260 N.Y. 138, 183 N.E. 273 (1932) (Mere accident, not reckless); *People v. Quintano*, 25 N.Y.S. 2d 269 (County Ct. 1941); *People v. Davis*, 9 N.Y.S. 2d 620 (County Ct. 1938) (Hitting cow at 50-60 M.P.H., not reckless); *People v. Whitby*, 44 N.Y.S. 2d 76 (Middletown City Ct. 1943) (Unwitnessed accident held insufficient evidence); *Sheridan v. Fletcher*, 270 App. Div. 29, 58 N.Y.S. 2d 466 (3rd Dept. 1945); *Seid v. Hartnett*, 256 App. Div. 200, 9 N.Y.S. 2d 426 (1st Dept. 1939) (Collision); *Trauth v. Hartnett*, 253 App. Div. 920, 2 N.Y.S. 2d 344 (2nd Dept. 1938) (Hitting pedestrian, not reckless in itself); *People v. Parker*, 192 Misc. 551, 84 N.Y.S. 2d 187 (County Ct. 1948) (Defendant left road while going 40 M.P.H. for no apparent reason, evidence insufficient); *In re Lipschitz*, 259 App. Div. 640, 20 N.Y.S. 2d 299 (1st Dept. 1940) (Several people killed; not considered in determining reckless); *Commonwealth v. Woods*, 71 Pitt. 396 (Pa. 1923) (Accident with policeman who was in hot pursuit of another is not reckless driving).

42. *People v. Aldrich*, 191 N.Y.S. 899 (County Ct. 1922) (Driving at less than 12 M.P.H., not reckless); *People v. Carrie*, 122 Misc. 753, 204 N.Y.S. 759 (County Ct. 1924); *People v. Higgins*, 165 Misc. 503, 2 N.Y.S. 2d 345 (County Ct. 1937) (40 M.P.H., not guilty); *People v. Gardner*, 255 App. Div. 683, 8 N.Y.S. 2d 917 (4th Dept. 1939); *Hart v. Mealey*, 287 N.Y. 39, 38 N.E. 2d 121 (1941) (Violated traffic infraction and as a result hit pedestrian, not guilty); *People v. Byrne*, 90 N.Y.S. 2d 825 (Utica City Ct. 1949) (Speeding and skidding, insufficient); *People v. Roberts*, 195 Misc. 172, 89 N.Y.S. 2d 367 (County Ct. 1949); *State v. Vanhoy*, 230 N.C. 162, 52 S.E. 2d 278 (1949) (80-90 M.P.H., held sufficient to constitute reckless driving); *Commonwealth v. Roberts*, 11 Wash. 126, 79 Pitt. 351 (Pa. 1930) (Rule of road violation, not guilty); *Commonwealth v. Leone*, 250 Mass. 412, 146 N.E. 26 (1925) (15-25 M.P.H. in downtown area, warranted conviction).

43. *Steffani v. State*, 45 Ariz. 210, 42 P. 2d 615 (1935) (Blinded by headlights and as result accident occurred; reckless driving to drive 20-25 M.P.H. when blinded); *Pfahl v. State*, 42 N.Y.S. 2d 372 Ct. Cl. (1943); *Commonwealth v. Schwartz*, 23 Luz 44 (Pa. 1924).

44. *Commonwealth v. Hughes*, 22 D. & C. 377 (Pa. 1935); *Commonwealth v. Mugnani*, 15 Wash. 138 (Pa. 1934); *Commonwealth v. Frisch*, 41 D. & C. 266 (Pa. 1940).

45. *Hill v. State*, 27 Ala. Appeals 202, 169 S. 21 (1936) (Driving without lights on wrong side of road); *State v. Monteith*, 53 Idaho 30, 20 P. 2d 1023 (1933) (Intoxicated, passed when pedestrian was on left side of road, struck and killed him, held a reckless driver); *State v. Flincham*, 238 N.C. 149, 44 S.E. 2d 724 (1947) (On wrong side of road when another car approached, intoxicated); *Commonwealth v. Godshalk*, 9 Leh. 136 (Pa. 1920) (Refusal to obey workman's flagging down; hit a girl on wrong side of road); *Commonwealth v. Kline*, 19 Berks. 312, 9 D. & C. 448 (Pa. 1926); *State v. Blake*, 62 S.D. 538, 225 N.W. 108 (1934).

46. *People v. Kosik*, 144 Misc. 403, 258 N.Y.S. 70 (County Ct. 1932); *Donahue v. Fletcher*, 299 N.Y. 227, 86 N.E. 2d 574 (1949).

47. *State v. Cody*, 224 N.C. 470, 31 S.E. 2d 445 (1944); *State v. Wilson*, 218 N.C. 769, 12 S.E. 2d 654 (1941); *State v. Holbrook*, 228 N.C. 620, 40 S.E. 2d 843 (1948); *State v. Steelman*, 228 N.C. 634, 46 S.E. 2d 845 (1948).

be acts of reckless driving.⁴⁸ Other decisions found in the "due circumspection" states indicate that the statute was meant to legislate against acts which a reasonable man can easily perceive will cause substantial bodily harm or property damage.⁴⁹

III. Statutes Which Enumerate Acts of Reckless Driving

Statutes enumerating particular courses of conduct which are acts of reckless driving have not been found satisfactory.⁵⁰ The principal defect in these statutes is not in their wording, but in their use and application. An examination of one of these statutes and the practice under it is illustrative of the problem generally.

In Indiana the reckless driving provision reads in part, "The offense of reckless driving, as defined in this section may be based, depending upon the circumstances, on the following enumerated acts and also on other acts which are not here enumerated but are not excluded and may be within the definition of the offense." (Herein follows six acts of courses of conduct.)⁵¹ When enforcing a statute of this type no cognizance is usually taken of the words, "depending upon the circumstances," and "also on other acts which are not enumerated." This is erroneous as the clauses clearly indicate that the commission of an enumerated act is not *per se* reckless driving nor are the listed acts all inclusive. The net result of law enforcement officials so treating the statute is that once a motorist performs an enumerated act he is charged with reckless driving, while many who are reckless drivers but do not engage in the conduct described, escape prosecution.

48. The importance that the danger to others be perceptible is illustrated by *State v. Ogle*, 224 N.C. 468, 31 S.E. 2d 444 (1944), and *State v. Cody*, 224 N.C. 470, 31 S.E. 445 (1944). *Ogle* was driving in front of *Cody* as the two approached a bridge; neither possessed a driver's license. Both autos were travelling at the same rate of speed and both were, safetywise, properly equipped. Pedestrians on the bridge were injured when a collision occurred between the two autos. The collision occurred when *Ogle* attempted to make a left turn without signalling. The conviction against *Ogle* was reversed, while that against *Cody* was sustained on the sole grounds that the former was unable to appreciate the danger while the latter was fully cognizant of it.

49. *People v. Moore*, 178 Misc. 750, 36 N.Y.S. 2d 328 (County Ct. 1942) (Failure to stop when ordered to do so by air raid wardens, not guilty); *People v. Sweet*, 130 Misc. 612, 225 N.Y.S. 182 (County Ct. 1927) (Cutting across a gas station lot to avoid a red light, not guilty); *State v. Mickle*, 194 N.C. 808, 140 S.E. 150 (1927) (Two truck drivers crossing back and forth on highway going 20-25 M.P.H. to kill time, convicted); *Robison v. State*, 30 Ala. App. 12, 200 S. 626 (1941) (Fact defendant drove jalopy is insufficient to charge reckless driving); *State v. Blake*, 62 S.D. 538, 255 N.W. 108 (1934) (Car driven down a steep hill, just as fast as it could roll, zigzagging and weaving back and forth and finally striking another car properly on its side of the road, was held reckless driving); *State v. Blankenship*, 229 N.C. 589, 50 S.E. 2d 724 (1948) (Weaving, skidding, zigzagging, speeding and intoxication resulting in accident; convicted); *State v. Camera*, 132 Conn. 247, 43 A. 2d 664 (1945) (Defendant scared pedestrians waiting for street car so they jumped in front of oncoming street car; held guilty); *Commonwealth v. Wagner*, 18 Mun. 159, 9 D. & C. 361 (Pa. 1926) (Reckless driving when defendant deliberately drove down icy road roped off and reserved for sleds); *Commonwealth v. Holman*, 160 Pa. 211, 50 A. 2d 720 (1947) (Daylight with no obstruction or other traffic, defendant speeds to intersection at 35 M.P.H., does not stop but kills child two feet from curb; held reckless driving); *Commonwealth v. Shriver*, 35 D. & C. 1 (Pa. 1940) (Driving truck on slippery highway without skid chains, not reckless); *Commonwealth v. Diehl*, 35 D. & C. 503 (Pa. 1940) (Making left turn without giving signal, not reckless driving but can become so under circumstances).

50. The information for this section was obtained through a personal interview with Mr. Robert Donnigan, of the Northwestern University Traffic Institute, and is based upon Mr. Donnigan's extensive experience in the administration of these statutes.

51. BURN'S IND. ANN STAT. 1933 § 47-2001.