

BOATING

Admiralty, Navigation, and Boating -- DWI Boating -- Not a Lesser-Included Offense of Involuntary Manslaughter

State v. Hudson, 345 N.C. 729 (1997)

DWI boating is not a lesser-included offense of involuntary manslaughter and defendant was not entitled to an instruction on DWI boating when the indictments against him charged only that he feloniously killed the victim. The offense of DWI boating on its face contains an essential element that is not an element of involuntary manslaughter in that it requires a finding of either impairment or a blood alcohol concentration of .10 or higher. Although factual findings supporting this element could be used to support the culpable negligence element of involuntary manslaughter, the finding of intoxication is not essential to a conviction of involuntary manslaughter. The jury here could have found culpable negligence on other grounds but did not; that merely creates a factual situation in which the elements of the DWI boating offense and the culpable-negligence element of involuntary manslaughter are in apparent identity but does not alter the definitional approach to the determination of lesser-included offenses followed in this jurisdiction.

Admiralty, Navigation, and Boating -- Involuntary Manslaughter Operating Boat While Intoxicated as Lesser Included Offense

State v. Hudson, 123 N.C. App. 336 (1996) 473 S.E.2d 415

Operating a boat while intoxicated is a lesser included offense of involuntary manslaughter predicated upon that crime, since it satisfies the "culpable negligence" alternative within the definition of involuntary manslaughter, and every element of operating a boat while intoxicated, N.C.G.S. § 75A-10A, is embraced in the common law definition of involuntary manslaughter.