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## GROSS NEGLIGENCE AS AN ELEMENT OF INVOLUNTARY MANSLAUGHTER

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**Introduction:** legislation holding parents criminally responsible for the delinquent acts of their children faces with the difficulty of meeting the requisite legal thresholds, such as proving willful intent or gross negligence on the part of the parent. Typically, a person who contributes to the neglect or delinquency of a minor is guilty only of a misdemeanor. **Purpose:** address important questions about the negligence of the parents and their potential criminal liability for manslaughter. **Results:** James and Jennifer Crumbley's conviction doesn't fit into any of the categories of traditional parental responsibility laws and is instead a first-of-its-kind extension of the manslaughter statute. The liability for the lethal acts of others involves proof of the existence of felonious intent plus a causal relationship between the felony and the death. Under the current common law, the core of complicity lies in intentionally encouraging or assisting the principal offender. **Conclusions:** the Crumbley verdict may forge a precedent for being gradually applied as a tool for prosecutors to pressure suspects into plea bargains. They "lessen the *mens rea* needed to establish guilt," and thus parents are held responsible despite not intending to allow the child to commit the crime.

**Key words:** criminal law, parental responsibility, involuntary manslaughter, gross negligence, failure to perform a legal duty.

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## ГРУБАЯ ХАЛАТНОСТЬ КАК ЭЛЕМЕНТ НЕПРЕДУМЫШЛЕННОГО УБИЙСТВА

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**Введение:** законодательство, предусматривающее уголовную ответственность родителей за правонарушения своих детей, сталкивается с трудностями при соблюдении необходимых юридических требований, таких как доказательство умысла или грубой небрежности со стороны родителя. Как правило, лицо, способствующее безнадзорности или правонарушению несовершеннолетнего, виновно только в мелком правонарушении. **Цель:** ответить на важные вопросы о халатности родителей и их потенциальной уголовной ответственности за непредумышленное убийство. **Результаты:** обвинительный приговор по делу Джеймса и Дженнифер Крамли не вписывается ни в одну из категорий традиционных законов об ответственности родителей и является первым в своем роде дополнением к закону о непредумышленном убийстве. Ответственность за действия, повлекшие смерть других лиц, предполагает доказательство наличия преступного умысла, а также причинно-следственной связи между преступлением и смертью. Согласно действующему общему праву суть соучастия заключается в намеренном поощрении или содействии главному преступнику. **Выводы:** вердикт по делу Крамли может создать прецедент, который постепенно будет использоваться прокурорами в качестве инструмента давления на подозреваемых для заключения сделок о признании вины. Они «уменьшают количество доказательств, необходимых для установления вины», и, таким образом, родители несут ответственность, несмотря на то что не намеревались позволять ребенку совершать преступление.

**Ключевые слова:** уголовное право, ответственность родителей, непредумышленное убийство, грубая халатность, неисполнение законных обязанностей.

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L'arbre que tu n'auras pas taillé  
au début, te trahira à la fin [3, c. 398].

Le désert grandit: malheur à celui  
qui recèle des déserts! [20, c. 212]

## 1. Introduction

On November 30, 2021, 15-year-old Ethan Crumbley murdered four of his classmates and wounded seven others in a high school shooting in Oxford, Michigan. According to authorities, the shooting “appeared random”, because he targeted no particular individuals. Crumbley was subsequently charged by his county prosecutor as a terrorist for his desire to induce fear and panic in the community. In the ensuing days, the case took on an even more unprecedented political dimension when Crumbley’s parents were themselves charged with abetting their son’s crimes by failing to recognize and control the signs of massive adolescent distress [30, c. 64]. The shooting prompted important questions about the negligence of the parents and their potential criminal liability for manslaughter [29, c. 143].

It’s important to look at new parental accountability efforts through their historical contexts. In rare cases when youth engage in serious forms of delinquent behavior, parents themselves may be charged with a crime. Legislation holding parents criminally responsible for the delinquent acts of their children quickly followed the enactment of civil liability and neglect-type statutes. The first law holding parents criminally responsible for contributing to the delinquency of their children was passed in 1903 in Colorado, but the difficulty of meeting the requisite legal thresholds, such as proving willful intent or gross negligence on the part of the parent, has resulted in very few instances of parents receiving criminal charges. Nonetheless, parental legal culpability largely falls into three categories: vicarious liability, which assumes financial responsibility on the part of the caregiver for damages caused by children; status offenses, for behaviors that are illegal only due to a child’s minor status; and criminal responsibility, when youth commit serious, and usually violent, crimes [31,

c. 405]. Typically, a person who contributes to the neglect or delinquency of a minor is guilty only of a misdemeanor [1].

James and Jennifer Crumbley’s conviction doesn’t fit into any of categories of traditional parental responsibility laws and is instead a first-of-its-kind extension of the manslaughter statute. The liability for lethal acts of others involves proof of the existence of felonious intent plus causal relationship between the felony and the death.

Supporters of CDM statutes<sup>1</sup> believe that the conditions within the family are the most predictive component of a child’s behavior and that it is the responsibility of the parent to provide sufficient positive guidance to children on the importance of adhering to the values of society at large<sup>2</sup>. This type of legislation quickly gained popular support, and since the enactment of the Colorado initiative, at least 42 States and the District of Columbia have passed similar legislation [22].

## 2. The trial

Ethan Crumbley was charged as an adult with first-degree murder, assault with intent to murder, terrorism and gun charges in the shooting at Oxford High School<sup>3</sup>. State law excludes some classes of cases involving juvenile age offenders from juvenile court, granting adult criminal court exclusive jurisdiction over some types of offenses. Murder and serious violent felony cases are most commonly “excluded” from juvenile court [34, c. 106].

The gun used in the shooting was given to Ethan Crumbley as an early Christmas present, prosecutors have said. “The court finds that the deaths of the four victims could have been avoided if his parents exercised ordinary care and diligence in the care of their son. Therefore, they were charged with involuntary manslaughter and accused of making the gun used in the shooting available to the teen” [24].

On December 8, 2023, Ethan pleaded guilty to all his crimes and was sentenced to life in prison without the possibility of parole. Since he was seeking an appeal, the notice to Oakland County Circuit Court from the State Appellate Defender

Office was filed on January 22, 2024 [14]. His lawyers also counseled against having Crumbley testify in his parents' upcoming trials, to safeguard privileges related to confidential communications [21].

They have informed Oakland County Circuit Judge: "Given Ethan Crumbley's ongoing appeal and the substantial overlap in the subject matter in these three cases, we will advise Ethan to invoke his right to remain silent, should he be called to testify in either pending trial" [9].

At the times of both the shootings and the sentencing, Ethan Crumbley was considered a "minor" by the state of Michigan. He became an "adult" in the state's eyes only when it concerned charging, trying, convicting, and sentencing him for murder. Since the state wanted to convict Jennifer Crumbley of involuntary manslaughter for her son's crimes, Ethan had to retroactively stop being the adult he'd previously been transformed into for purposes of the prior case [32].

Parents may be subject to vicarious liability if their child intentionally injures another person, guided by the notion that they failed to effectively supervise their child or otherwise neglected their parenting responsibilities. Although it is rare, parents in some states may have criminal liability for their child's actions [31, c. 404].

Felony complaints against James and Jennifer Crumbley were issued soon after their arrests, both of which alleged that defendants' grossly negligent conduct caused the deaths of the four victims by: storing his or her firearm and its ammunition so as to allow access to the firearm and ammunition by his or her minor child or the grossly negligent failure to perform the following legal duty, to wit: failure to exercise reasonable care to control his or her minor child so as to prevent him from intentionally harming others or from so conducting himself so as to create an unreasonable risk of bodily harm to others knowing that he or she has the ability to control his or her child and knowing of the necessity and opportunity to do so [25].

The judge presiding over the trial of Michigan school shooter Ethan Crumbley's mother said she would not allow the gunman to testify if he invokes his Fifth Amendment right, as his attorneys have previously indicated he would. The Fifth Amendment protects a person from being

"compelled in any criminal case to be a witness against himself." The amendment is often invoked to avoid answering specific questions during testimony.

Jennifer Crumbley's attorneys have asked the judge to compel her teenage son and his two jail psychiatrists to testify at her trial. Prosecutors have accused Jennifer and James Crumbley of ignoring their son's pleas for mental health care and buying him a gun despite his deteriorating mental state. Ethan Crumbley's attorneys have indicated they will not waive privilege or confidentiality for his medical records, the testimony of his doctors, or his own testimony [12]. In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment to the Constitution of the United States, commanding that no person shall be compelled in any criminal case to be a witness against himself [40].

Jennifer Crumbley's attorney claimed in a filing that the teenager's testimony is crucial to refute text messages and journal entries he wrote about his parents' knowledge of and involvement with his mental health. The messages were shown during the testimony of a cell phone forensics expert who analyzed phone and social media data from the Crumbleys [12]. Nevertheless, Ethan Crumbley did not testify in this trial, as his attorneys said he would invoke his Fifth Amendment right to silence.

In separate trials, a jury convicted Jennifer Crumbley (on February 6, 2024) and James Crumbley (on March 14, 2024) of involuntary manslaughter, making them the first parents of a mass school shooter in the U.S. to be held responsible. On April 9, 2024, they have each been sentenced to 10 to 15 years in prison. The Crumbleys are eligible for parole after they serve 10 years in prison, but they cannot be held for more than 15 years if parole is denied [8].

Before the circuit court, defendants filed a combined motion to quash the bindover, contending that the district court abused its discretion by finding probable cause existed to believe defendants committed involuntary manslaughter. In particular, defendants argued that the bindover had to be quashed because, as a matter of law, the prosecution could not prove causation. Though

acknowledging that the issue of proximate causation, as opposed to causation-in-fact, hinged on whether EC's independent criminal actions were reasonably foreseeable, defendants argued that the district court's reliance on *People v Head*<sup>4</sup>, and its ultimate conclusion, were in error [26].

This case relied on an unusual and novel legal strategy and represented an attempt to expand the scope of blame in mass shootings. While parents have previously faced liability for their child's actions – such as with neglect or firearms charges – this was the first time a parent of a school shooter was held directly responsible for the killings. The prosecution argued Jennifer Crumbley is responsible for the deaths because she was “grossly negligent” in giving a gun to her son Ethan, who was 15 at the time, and failing to get him proper mental health treatment despite warning signs. James Crumbley was convicted on four identical counts of involuntary manslaughter [11].

On November 26, 2021, James and Ethan Crumbley went to a gun shop because James wanted to purchase a nine-millimeter SIG Sauer handgun. To make this purchase, James provided his identification, filled out and signed the required form, and waited for completion of the background check. The form James signed indicated that purchasing a gun for someone else was illegal. When the background check cleared, James purchased the SIG Sauer, which was given to him in a case containing a cable lock, a trigger lock, an ATF Youth Handgun Notice Act pamphlet, and extra magazines of ammunition [25].

Oakland County Prosecutor said that James Crumbley bought his son a gun and failed to lock it away from him. Defense Attorney told jurors there was no proof the teen was handling firearms by himself in the Crumbley household [10]. The Crumbleys' defense team has stated that the weapon was legal to own, and Michigan has no law requiring the gun to be properly stored away from juveniles [2].

On November 26, 2021, Jennifer took Ethan to a shooting range. A surveillance video from the range showed Jennifer and Ethan firing the gun. Afterward, Ethan took the gun apart, put it back inside the case, took the leftover ammunition, and left with Jennifer. On the morning of November 30, he went to school, with his backpack containing

the SIG Sauer handgun [27]. Ethan had been scheduled to meet with school officials to discuss his behavior on the previous day. By the time he arrived at this meeting, a teacher had raised concerns about drawings he had made which depicted a gun, a corpse and the words, “Blood everywhere” and “The thoughts won't stop. Help me.” He was returned to class and soon after that Ethan emerged with a loaded semi-automatic weapon [29, c. 140]. At 12:50 p.m., he committed the murders while also injuring six other students and one teacher. On the day of the shooting, police executed a search warrant for defendants' home and found the gun case for the SIG Sauer open on the bed next to an empty box of nine-millimeter ammunition and a locked gun safe in a dresser drawer [26].

Crumbley is the first parent to be held directly responsible for a school shooting carried out by their child, which is opposite to legal principle: “People cannot be held responsible for the actions of others”. In the opinion of C. Sbeglia, charges against parents of offending juveniles can be mounted when parental intent or gross negligence appears evident in cases where juveniles' actions result in the death or grave bodily injury of another person. The limited application of parental criminal culpability can be attributed to both the challenges of defining a child's ability to act independently of their parents and the high threshold required to prove intent or negligence on the part of the parent as a third party. Cases like the school shooting committed by Ethan Crumbley are rare instances in which the combination of extreme criminal behavior and potentially extreme negligence may warrant criminal charges against a parent [31].

According to R. Weisberg, there's nothing unusual about a non-trigger person being liable for someone else fatally shooting the victim. Under standard complicity law, the non-shooter can be equally guilty of a murder charge for “aiding and abetting” (i.e., helping to cause) the killing. But that happens when the non-shooter shared the intent to kill. What's unusual here is that we have a clearly intentional killing by the shooter, but the father is guilty of the lesser crime of involuntary manslaughter. Clearly, he never intended the shooting, but he helped cause it in a grossly negligent way. So he isn't an “accomplice” in the usual sense [37].

According to E. Bernick and B. Yankah, there's always an initial horrifying case that's used to justify the expansion of criminal law". The Crumbley verdict may forge a precedent being gradually applied as a tool for prosecutors to pressure suspects into plea bargains [6]. They "lessen the *mens rea* needed to establish guilt," and thus parents are held responsible despite not intending to allow the child to commit the crime.

### 3. Involuntary manslaughter

According to American criminal law, manslaughter is another form of homicide, which involves a significant number of attacks against life. 18 U.S. Code (§ 1112) states that manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

1) voluntary – upon a sudden quarrel or heat of passion;

2) involuntary – in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death. The main difference between murder and manslaughter is that the perpetrator of a murder has a malice aforethought [36, c. 82].

Involuntary manslaughter is unlawful killing without the intent to kill or cause really serious harm and is a common law offence. There are two classes of involuntary manslaughter: unlawful act manslaughter and manslaughter by gross negligence:

1. Unlawful act manslaughter is charged when death occurs due to a criminal act which a reasonable person would realise must subject some other person to at least the risk of some physical harm. It doesn't matter whether or not the offender knew that the act was unlawful and dangerous or whether harm was intended.

2. Manslaughter by gross negligence occurs when the offender is in breach of a duty of care towards the victim, the breach causes the death of the victim and, having regard to the risk involved, the offender's conduct was so bad as to amount to a criminal act or omission [33].

A man is liable for involuntary manslaughter, unless his act can be otherwise justified or excused, if his lawful or unlawful act causes death and that act was recklessly performed by him

despite a high and foreseeable risk of death to other persons. This formulation of manslaughter liability for deaths is produced by grossly reckless conduct [18, c. 65].

On the other hand, the *Model Penal Code* (MPC) treats as manslaughter any intentional killing under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be (Article 210.3, Section 1, Clause b.). According to Section 2 of this Article, manslaughter is a felony of the second degree [36, c. 82].

According to *Michigan Penal Code*, Sections 750.321 and 750.322 ("Manslaughter"), in order for prosecutors to prove the charge of voluntary manslaughter, they must prove three elements beyond a reasonable doubt:

1. That the defendant caused the death of the deceased victim, that the deceased individual died as a result of the defendant's action.

2. That the defendant either:  
a. intended to kill the victim;  
b. intended to do great bodily harm to the victim;

c. created a situation where the risk of great bodily harm or death was very high, knowing that as a result of the defendant's actions he or she knew that serious harm or death would likely result.

3. That the defendant caused the death of the victim without justification or lawful excuse.

Involuntary manslaughter occurs when an individual kills another person without intent, or unintentionally [41].

Although neither parent was present at the school nor pulled the trigger, the charges are based on gross negligence such that the Crumbleys had knowledge of their son's mental instability and had purchased him the gun used in the shooting, that led to the death of four students at Oxford High School [1].

On January 1, 2014, by Administrative Order 2013-13, the Michigan Supreme Court created the Committee on Model Criminal Jury Instructions. The instructions do not have the force and effect of a court rule, their use is required by Michigan Court Rules 2.512(D)<sup>5</sup>, unless the court

determines that an instruction does not accurately reflect the state of the law, or circumstances of the case require a variance or additional instructions. According to Model Criminal Jury Instructions 16.10<sup>6</sup>, to prove the charge of manslaughter, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(1) That the defendant caused the death of the victim, that is, that the victim died as a result of the defendant's act. (2) In doing the act that caused victim's death, the defendant acted in a grossly negligent manner. (3) In doing the act that caused the victim's death, the defendant intended to injure the victim. The touching must have been intended by the defendant, that is, not accidental, and it must have been against victims's will. (4) That the defendant caused the death without lawful excuse or justification [17].

Throughout Jennifer Crumbely's trial, Oakland County prosecutors introduced two different theories that could satisfy the involuntary manslaughter charges against her. In order to find Crumbely guilty, jury members must all agree that the prosecution proved at least one of two theories beyond a reasonable doubt. The first involuntary manslaughter theory introduced by the prosecutors focuses on negligence [13]. The Oakland County prosecutor claims Crumbely committed involuntary manslaughter because she was "grossly negligent."

According to Model Criminal Jury Instructions 16.18 (Involuntary Manslaughter – Gross Negligence), (1) Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act. In order to find that the defendant was grossly negligent, you must find each of the following three things beyond a reasonable doubt:

– First, that the defendant knew of the danger to another, that is, [he / she] knew there was a situation that required [him / her] to take ordinary care to avoid injuring another.

– Second, that the defendant could have avoided injuring another by using ordinary care.

– Third, that the defendant failed to use ordinary care to prevent injuring another when, to a reasonable person, it must have been apparent that the result was likely to be serious injury [17].

In the opinion of C. van der Bijl, a higher degree of fault is required in order to hold parents

liable on the grounds of criminal negligence than the level of fault required for civil negligence. Parental criminal liability may arise in a situation where failure to control the child's conduct is considered to be grossly or criminally negligent. For example, a conviction for negligent involuntary manslaughter can result if a child causes the death of another. To hold a parent criminally liable for an act of murder committed by his or her child, the parent's failure to control must amount to extreme recklessness and be coupled with a causal connection between such a failure and the death of the third party. What could be problematic however, is that it must first be proved that the parent had "specific knowledge" of the child's intended criminal conduct to be able to ascertain whether the failure to act to protect others was reckless or negligent [39, c. 6].

Under the current common law, the core of complicity lies in intentionally encouraging or assisting the principal offender. The Model Penal Code requires that the accomplice helps with „the purpose of facilitating the commission of the offense" (Article 2.06(3)). Most other Anglo-American jurisdictions adopt knowledge as the relevant mental element for complicity. The majority of criminal systems inspired by the civil law tradition treat *dolus eventualis* as a sufficient condition for complicity. The MPC, however, facially requires "purpose", and many have interpreted this as bravely forging a new path that requires an accomplice to have a positive desire for the criminal outcome that his or her assistance helps to bring into the world [35, c. 141].

The prosecution's second involuntary manslaughter theory is related to the "failure to perform a legal duty" – Jennifer Crumbely had a legal duty to the victims killed in the shooting. According to Model Criminal Jury Instructions 16.13 (Involuntary Manslaughter-Failure to Perform Legal Duty), (1) The defendant is charged with the crime of involuntary manslaughter resulting from a failure to perform a legal duty. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

1. That the defendant had a legal duty to the victim. A legal duty is one imposed by law or contract [17].

The prosecution bases its argument on the *American Restatement of Torts, Second*, which

is a treatise issued by the American Law Institute. It summarizes the general principles of common law United States tort law. Even in cases where parental responsibility laws do not apply, parents may still find themselves responsible for their children's actions under the "common law," which is a set of principles that does not depend on state law or court decisions. This "common law" authority provides a summary of a parent's legal obligations when it comes to their minor children [23]. According to Section 316 ("Duty of Parent to Control Conduct of Child"), a parent is under a duty to exercise reasonable care so as to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent:

- (a) knows or has reason to know that he has the ability to control the child,
- and
- (b) knows or should know of the necessity and opportunity for exercising such control [19, pp. 338-339].

To prove this charge, the prosecutor must prove each of the remaining elements noted in *Model Criminal Jury Instructions* 16.13.

2. That the defendant knew of the facts that gave rise to the duty.

3. That the defendant willfully neglected or refused to perform that duty and [his / her] failure to perform it was grossly negligent to human life.

4. That the death of the victim was directly caused by defendant's failure to perform this duty, that is, that the victim died as a result of act or omission causing death [17].

In the opinion of the prosecution, the victims died as a result of Crumbley's failure to exercise reasonable care to control her minor child to prevent him from intentionally harming others or conducting himself to create an unreasonable risk of bodily harm to others when Crumbley knew she had the ability to control her son and knew of the necessity and opportunity to do so [13].

The United States Model Penal Code (MPC)<sup>7</sup> recognises liability for omissions, and most States have incorporated aspects of the MPC within their own statutes, leading to general acceptance that criminal liability is impossible in situations where there has been an omission or failure to act by a person who had a legal duty to do so. According to the *Model Penal Code*

Section 2.01.<sup>8</sup>, Subsection 3, "liability for the commission of an offense may not be based on an omission unaccompanied by action unless":

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law [38, pp. 19-20].

Common law and statute law both qualify as sources of duties the violation of which results in criminal liability, provided that a criminal offense can be found that threatens anyone causing a certain type of harm (say, death) with criminal punishment (as is the case with homicide). Traditional common law duties include those based on certain "relationships" (e. g. parent to child).

In addition to these non-statutory sources of criminally enforceable duties, there are the duties one can find in the vast array of modern statutes, criminal or not. Some of these duties simply codify traditional common law duties. For instance, the New York Court of Appeals, in *People v. Steinberg*, managed to find a statutory source for a father's duty to prevent the death of his daughter.<sup>9</sup> It invoked New York's Family Court Act in support of the proposition that "parents have a nondelegable affirmative duty to provide their children with adequate medical care." As its title suggests, the statute invoked by the court dealt primarily with procedural matters.<sup>10</sup> It did not explicitly set out parental duties, never mind parental duties the violation of which may trigger criminal liability (including, as in this case, liability for homicide) [7, p. 32].

#### 4. The causality

According to Michigan Court of Appeals, causation is "an element of involuntary manslaughter." Specifically, the term and concept have two parts: factual causation and proximate causation." "Factual causation exists if a finder of fact determines that 'but for' defendant's conduct the result would not have occurred." Proximate causation "is a legal construct designed to prevent criminal liability from attaching when the result of the defendant's conduct is viewed as too remote or unnatural." There can be more than one cause of harm, and a defendant's acts need only be a contributory cause that was a substantial factor in producing the harm. The criminal liability does not require that there be but

one proximate cause of harm found, because all acts that proximately cause the harm are recognized by the law. “For a defendant’s conduct to be regarded as a proximate cause, the victim’s injury must be a ‘direct and natural result’ of the defendant’s actions” [25].

Regarding the factual causation, the record squarely supports that “but for” defendants’ acts and omissions, Ethan Crumbley would not have killed the victims that day. Concerning the proximate causation, Ethan Crumbley’s intentional misconduct did not, as a matter of law, supersede defendants’ acts being a cause of the victims’ deaths, as his acts will only supersede defendants’ acts if his intentional acts were not reasonably foreseeable. Defendants’ actions and inactions were inexorably intertwined with Ethan Crumbley’s actions, i.e., with the intervening cause. This connection exists not simply because of the parent-child relationship but also because of the facts showing that defendants were actively involved in Ethan Crumbley’s mental state remaining untreated, that they provided him with the weapon used to kill the victims, and that they refused to remove him from the situation that led directly to the shootings. In this circumstance, a reasonable juror could conclude that defendants’ “conduct ‘increased the foreseeable risk of a particular harm occurring through a second actor [27].

According to Michigan Court of Appeals, grossly negligent or intentional acts are generally superseding causes. This case falls outside the general rule regarding intentional acts because Ethan Crumbley’s acts were reasonably foreseeable, and that is the ultimate test that must be applied. The district court did not abuse its discretion in determining Ethan Crumbley’s decision to shoot four classmates was not a superseding cause because it “was foreseeable based on an objective standard of reasonableness” [25].

In his separate opinion, judge J. Riordan wrote: “The fact that a child may have access to a potentially dangerous instrumentality made available by his or her parents, such as a motor vehicle, a knife, or even a gun, does not necessarily affect these principles. On the other hand, drawings made by Ethan Crumbley, which depicted a gun and a corpse, suggests that he presented a danger to others with his handgun, because there was visual evidence, known by

defendants, that Ethan Crumbley was contemplating the act of gunshot wounds being inflicted upon someone. This drawing, coupled with the other evidence, establishes probable cause that Ethan Crumbley’s conduct on the afternoon of November 30, 2021, was reasonably foreseeable by defendants” [4].

The Michigan Court of Appeals in *Ciaramitaro v. Ruggero*, also bases its argument on *The American Restatement of Torts, Second*, § 316. A plaintiff in a negligence action must establish that a defendant’s negligent conduct was the proximate cause of his or her injury. In order to be a proximate cause, the negligent conduct must have been a cause of the plaintiff’s injury (cause-in-fact) and the plaintiff’s injury must have been a natural and probable result of the negligent conduct (legal causation). As stated by Michigan Supreme Court <sup>11</sup>, “to adequately establish cause-in-fact, a plaintiff’s proof must be more than conjecture. The plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant’s conduct, the plaintiff’s injuries would not have occurred” [5].

Under section 316 of the *Restatement 2d of Torts*, a complaint must allege specific instances of prior conduct that are sufficient to put the parents on notice that the act complained of was likely to occur. The disagreement centers upon whether a parent needs prior notice of the specific conduct that caused the injury, or simply notice that the child’s general misconduct could lead to an injury. Some courts have held that the specific conduct that caused the injury must have been habitual, or at least similar to the minor’s prior misconduct. The Florida Supreme Court applied this theory in *Gissen v. Goodwill* <sup>12</sup>. The concern reflected by *Gissen* is that parents should be held liable only if the injury was foreseeable to the parent. A parent’s mere knowledge of the child’s mischievous and reckless disposition, according to this theory, does not suffice to render a parent liable [19, pp. 339-340].

##### **5. “Failure to perform a legal duty” in judicial practice**

Maybe the most similar case to the Crumbleys arises from the death of the minor victim, when Karen S. Albers was convicted of



involuntary manslaughter<sup>13</sup> on the basis of an incident in which her six-year-old son, Brent, obtained a lighter and started a fire in their apartment complex, resulting in the death of a twenty-two-month old child, Christopher Byers. The victim resided in another apartment within the same complex occupied by the defendant and her son. She was sentenced to four to fifteen years of imprisonment [28].

According to Michigan Court of Appeals<sup>14</sup>, defendant is correct that the trial court never instructed the jury that it must unanimously agree on one of the prosecution's theories in order to convict as opposed to being able to convict defendant on the basis of some jurors considering her guilty under the first theory while others considering her guilty under the second theory. Defendant's argument depends on attacking the second theory as legally unsupported on the ground that defendant owed no legal duty to Christopher. However, assuming this is true, Michigan Court of Appeals concluded that defendant is not entitled to relief under the Carines standard because the jury could only find her guilty under the second theory by making findings of fact that would also mean that she was guilty under the first theory, which was not dependent on any breach of duty to Christopher under the lease agreement. Critically, if a juror found guilt under the second theory, the juror would also have found that Christopher died as a result of defendant's failure to properly secure the lighter that Brent used to start the fire [15].

The case *People v. Peterson* arises from the July 2018 death of the minor victim, who died after falling through a hole in defendant's home<sup>15</sup>. When the incident occurred, the victim lived in defendant's home with her mother, Dasiah Jordan. Defendant, Tanisha Epps, Epps's four children, and Jordan's two other children also lived there. By July 2018, before Jordan moved in, Epps covered the hole with a piece of cardboard. The night the incident occurred, defendant and Epps left Jordan at home with six of the children. Jordan later left as well, leaving the children home alone. After defendant returned home, one of the children stated that it appeared as though someone fell through the hole.

The defendant Tonya Peterson is charged with Count 2, the crime of Involuntary Manslaughter resulting from failure to perform a

legal duty and she was sentenced to 17 months to 15 years' imprisonment. To prove this charge the prosecutor must prove each of the four elements beyond a reasonable doubt<sup>16</sup>. Each of the other elements of involuntary manslaughter relied on the premise that defendant owed the victim a duty to "provide a safe environment." In order to establish invitee status, a plaintiff must show that the premises were held open for a commercial purpose.

The evidence showed that defendant did not charge Jordan rent to live in her home. Defendant therefore did not hold open her home to the victim and her family for a "commercial purpose," and, accordingly, they were not invitees. Although the conditions within defendant's home were undeniably dangerous, defendant did not owe the victim ... a common-law duty of affirmative care to make the home safe. On the basis of the foregoing, Michigan court of appeals concluded that in this case, after a thorough examination of the entire record, to allow the trial court's instructional error regarding the duty defendant owed to the victim to stand would result in a miscarriage of justice. Thus, reversal is warranted, and defendant is entitled to a new trial [16].

### Conclusion

According to Michigan Court of Appeals, grossly negligent or intentional acts are generally superseding causes. This case falls outside the general rule regarding intentional acts because Ethan Crumbley's acts were reasonably foreseeable, and that is the ultimate test that must be applied. The district court did not abuse its discretion in determining Ethan Crumbley's decision to shoot four classmates was not a superseding cause because it "was foreseeable based on an objective standard of reasonableness."

Although neither parent was present at the school nor pulled the trigger, the charges are based on gross negligence such that the Crumbleys had knowledge of their son's mental instability and had purchased him the gun used in the shooting, that led to the death of four students at Oxford High School. According to American criminal law, manslaughter by gross negligence occurs when the offender is in breach of a duty of care towards the victim, but in this case, the prosecution charged

James and Jennifer Crumbley because they acted in a grossly negligent manner towards murderer.

Supporters of CDM statutes believe that the conditions within the family are the most predictive component of a child's behavior and that it is the responsibility of the parent to provide sufficient positive guidance to children on the importance of adhering to the values of society at large. Typically, a person who contributes to the neglect or delinquency of a minor is guilty only of a misdemeanor. The conviction of the Crumbley's doesn't fit into any of categories of traditional parental responsibility laws and is instead a first-of-its-kind extension of the manslaughter statute. The liability for lethal acts of others involves proof of the existence of felonious intent plus causal relationship between the felony and the death.

The Crumbley verdict may forge a precedent being gradually applied as a tool for prosecutors to pressure suspects into plea bargains. They "lessen the *mens rea* needed to establish guilt," and thus parents are held responsible despite not intending to allow the child to commit the crime.

#### NOTES

<sup>1</sup> "Contributing to the delinquency of a minor" (CDM).

<sup>2</sup> By 1997 seventeen States where an ordinance had been adopted, already had legislative measures in place to hold parents criminally liable for a failure to supervise their children. These parental responsibility statutes specifically cater for parental criminal liability for their children's misconduct [38, c. 5].

<sup>3</sup> He has been charged with four counts of first-degree murder, one count of terrorism causing death, seven counts of assault with intent to murder and 12 counts of possession of a firearm in the commission of a felony [2].

<sup>4</sup> 323 Mich App 526; 917 NW2d 752 (2018).

<sup>5</sup> Michigan Court Rules, As amended through April 3, 2024.

<sup>6</sup> "Involuntary Manslaughter".

<sup>7</sup> MPC §2.01(3)(1962) (updated 1985).

<sup>8</sup> "Requirement of Voluntary Act; Omission as Basis of Liability; Possession as an Act".

<sup>9</sup> 79 N.Y.2d 673 (1992).

<sup>10</sup> The defendant was charged with murder, and convicted of manslaughter. As the presence or absence of a duty relates to the question of actus reus rather than mens rea, the court's affirmation of a duty in this case would have supported a murder conviction.

<sup>11</sup> *Skinner v Square D Co*, 445 Mich 153, 164-65; 516 NW2d 475 (1994).

<sup>12</sup> 80 So. 2d 701 (Fla. 1955).

<sup>13</sup> M.C.L. §750.321.

<sup>14</sup> *People v. Albers*, 258 Mich. App. 578, 672 N.W.2d 336 (Mich. Ct. App. 2003).

<sup>15</sup> *People v. Peterson*, No. 348588 (Mich. Ct. App. Jan. 28, 2021).

<sup>16</sup> Michigan Court Rules 2.512(D), Criminal Jury Instructions 16.13.

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