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Criminal Law - Liability for Prior Criminal Negligence

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opinions in the instant case is the more desirable one. In a free society, it is necessary that there be a minimum of restraint on means of communication, and that permissible restraints be within limited areas. Although local governments should be able to restrain those communications which are obscene or would tend to incite unrest or riots, this power should be exercised in such a manner as to impose only those restraints which are absolutely necessary to accomplish the community purpose. In censorship and licensing regulations, there is a great opportunity for the censor to apply his personal opinion as to what should be allowed to be communicated. On the other hand, if local governments are obliged to restrain undesirable communications through judicial remedies, then the community purpose is still accomplished and at the same time the individual is deprived of communicating freely only after an open hearing in a court of law.[20] If it is necessary to regulate forms of communication in order to maintain proper standards in the community, it would seem more desirable that standards be interpreted and restraints be imposed by courts of law rather than by censors.

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CRIMINAL LAW — LIABILITY FOR PRIOR CRIMINAL NEGLIGENCE

The defendant loaned his car to a person who was intoxicated and who subsequently became involved in an automobile accident in which the driver of another car was killed. At the time of the accident the defendant was not in the car, but he was tried and convicted for the crime of involuntary manslaughter. The defendant contended that he could not be convicted because he was not a principal to the killing. On appeal to the Supreme Court of Michigan, *held,* reversed. The accountability of the owner of the automobile must rest upon his complicity in the misconduct involved. Where the criminal conduct was not counseled by him, was not accomplished by another acting jointly with him and did not occur in the attempted accomplishment of some joint enterprise, the defendant cannot be held criminally

20. See Kingsley Books, Inc. v. Brown, 354 U.S. 436 (1957). The Supreme Court upheld a law authorizing a public official to maintain action in court for an injunction to prevent the sale or distribution of obscene matter possessed by any person within the municipality with intent to sell or distribute the same on the ground that the statute provided for a trial within one day after joinder of issue with decision to be rendered within two days after the close of the trial.

liable as a principal in respect to the criminal conduct. *People v. Marshall,* 106 N.W.2d 842 (Mich. 1961).

Michigan defines involuntary manslaughter "as the killing of another without malice and unintentionally while doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself."[1] As a general rule there are two requirements that must be met before a defendant can be convicted of the criminal negligence type of involuntary manslaughter: the defendant must be grossly negligent and his negligent act must have been a substantial contribution to the homicide. The requirements of gross negligence are met when there is a disregard of the consequences which may ensue, and an indifference to the rights of others equivalent to a criminal intent.[2] Thus gross negligence has been found when the actor has knowledge of the highly dangerous nature of his actions or knowledge of such facts as under the circumstances would disclose to a reasonable man the highly dangerous character of his action.[3] Most involuntary manslaughter statutes provide

1. MICH. STAT. § 28.553 (1954): "Any person who shall commit the crime of manslaughter shall be guilty of a felony punishable by imprisonment in the state prison, not more than fifteen (15) years or by fine of not more than seven thousand five hundred (7,500) dollars, or both, at the discretion of the court. . . . Involuntary manslaughter is the killing of another without malice and unintentionally, but in doing some unlawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty."

2. *Id.* § 28.553: "The term 'gross negligence' means something more than mere negligence, such as wantonness and disregard of the consequences which may ensue, and indifference to the rights of others that is equivalent to a criminal intent."

The court in State v. Gooze, 14 N.J. Super. 277, 282, 81 A.2d 811, 814 (1951) described criminal negligence by saying: "In this second class of cases the rule is a broad one, as it regards as criminal negligence any act or omission done or left undone, as the case may be, in reckless disregard of the life of safety of another. Such negligence is often described as 'gross' negligence, the word 'gross' in this collocation implying an indifference to consequences." (Citations omitted.) See People v. Decina, 157 N.Y.S.2d 558, 138 N.E.2d 799 (1956); People v. Eckert, 157 N.Y.S.2d 551, 138 N.E.2d 794 (1956).

3. People v. Eckert, 157 N.Y.S.2d 551, 556, 138 N.E.2d 794, 979 (1956): "This conduct arises when the actor has knowledge of the highly dangerous character of his actions or knowledge of such facts as under the circumstances would disclose to a reasonable man the dangerous character of his action, and despite this knowledge he so acts. That he does not view his conduct as dangerous is of no consequence; his lack of realization of the danger involved may arise from his abnormally reckless temperament or from unexpected favorable results of previous conduct of the same sort . . . . To be dangerous his conduct must involve a reasonable probability of serious bodily harm or death. This, of course, turns on the particular circumstances of the case."

People v. Decina, 157 N.Y.S.2d 558, 564, 138 N.E.2d 799, 803 (1956): "It is sufficient, we have said, when his conduct manifests a 'disregard of the consequences which may ensue from the act, and indifference to the rights of others. No clearer definition, applicable to the hundreds of varying circumstances that

that when a defendant has killed someone as a result of doing an unlawful act he may be guilty of the crime even though no criminal negligence is involved.[4] However, some states provide that the unlawful act is merely indicative of gross negligence so that a specific finding of gross negligence is necessary even though the defendant is doing an unlawful act from which death ensues.[5] It is well settled that a driver can be prosecuted and convicted of involuntary manslaughter if during the operation of his car he is grossly negligent and death results therefrom.[6] However, in order for a person to be held criminally negligent, it is not necessary that the act occur at a time immediately prior to the homicide.[7]

Only a person who is a party to the commission of a criminal offense can be adjudged guilty of the offense.[8] In order that one may be guilty of criminal homicide the death must have been caused by his own acts or by someone acting in concert with him or in furtherance of a common object or purpose.[9] A

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may arise, can be given. Under a given state of facts, whether negligence is culpable is a question of judgment.'"

4. See, *e.g.*, MICH. STAT. § 28.553 (1954); TEX. ANN. PEN. CODE arts. 1239, 1240 (Vernon, 1925); PERKINS, CRIMINAL LAW 56-64 (1957).

5. See, *e.g.*, LA. R.S. 14:32 (1950), which provides: "Negligent homicide is the killing of a human being by criminal negligence. The violation of a statute or ordinance shall be considered only as presumptive evidence of such negligence."

6. Jones v. State, 33 Ala. App. 451, 34 So.2d 483 (1948); Trujillo v. People, 133 Colo. 186, 292 P.2d 980 (1956); Anderson v. State, 150 Neb. 116, 33 N.W.2d 362 (1948); Davis v. State, 194 Tenn. 308, 250 S.W.2d 534 (1952); PERKINS, CRIMINAL LAW 61 (1957).

7. A few cases have held that a person who is likely to lose consciousness when driving a car is criminally negligent when he gets into the car and drives and not at the point at which he actually loses consciousness. The court in State v. Gooze, 14 N.J. Super. 277, 286, 81 A.2d 811, 816 (1951) said: "In driving his car alone on a through-state highway with knowledge that he might at any time suddenly, without warning, lose consciousness or suffer a dizzy spell, and having been cautioned not to drive alone, constituted an act of wantonness and a disregard of the rights or safety of others."

People v. Decina, 157 N.Y.S.2d 558, 565, 138 N.E.2d 799, 803 (1953) said: "With this knowledge, and without anyone accompanying him, he deliberately took a chance by making a conscious choice of a course of action, in disregard of the consequences which he knew might follow from his conscious act, and which in this case did ensue. . . . To hold otherwise would be to say that a man may freely indulge himself in liquor in the same hope that it will not affect his driving, and if it later develops that ensuing intoxication causes dangerous and reckless driving resulting in death, his unconsciousness or involuntariness at that time would relieve him from prosecution under the statute. His awareness of a condition which he knows may produce such consequences as here, and his disregard of the consequences, renders him liable for culpable negligence, as the courts below have properly held." *Cf.* People v. Eckert, 157 N.Y.2d 551, 138 N.E.2d 794 (1956).

8. Partridge v. State, 88 Ark. 267, 114 S.W. 215 (1908); State v. Miclau, 140 N.E.2d 596 (Ohio App. 1957); 14 AM. JUR., *Criminal Law* § 63 (1938).

9. 22 C.J.S., *Criminal Law* § 79 (1940): "To constitute one a party to an offense it has been held to be essential that he be concerned in its commission in some affirmative manner, as by actual commission of the crime or by aiding and abetting in its commission." See United States v. Dellaro, 99 F.2d 781 (2d Cir.

person can be held for the misconduct of one over whom he exercised control.[10] Thus a person who aids and abets in the commission of the offense of operating a motor vehicle while under the influence of intoxicating liquor may be tried and convicted as a principal to the crime of involuntary manslaughter if someone is killed as a result of criminal negligence, although the actual driving was done by another person.[11] As yet, however, this rule has been applied only in the situation where the person loaning the vehicle to one under the influence of alcohol is actually present in the car, since there is no possibility of control otherwise. In fact, in a case where the defendant permitted another to use his automobile, which the defendant knew to be in a dangerous and defective condition, the court reversed the conviction of manslaughter arising from an accident in which the borrower struck and killed a pedestrian. The rationale was that there was no causal connection between the killing and the negligence of the owner.[12] However, in a case where the defendant-owner of a car was sitting next to the driver, permitted him to drive negligently, and this resulted in a fatal accident, the court said, "if the killing was the proximate cause of the criminally negligent act of the defendant he would be guilty of negligent homicide and the mere fact that some other cause operated with the negligence of the defendant to produce the injury does not relieve the defendant from liability."[13]

1938); Commonwealth v. Moore, 121 Ky. 97, 88 S.W. 1085 (1905); Smith v. State, 92 P.2d 582 (Okla. Crim. App. 1939); Carrico v. State, 16 Okla. Crim. 118, 180 Pac. 870 (1919); 14 AM. JUR., *Criminal Law* § 63 (1938).

10. 14 AM. JUR., *Criminal Law* § 63 (1938). See Elkhorn Mining Corp. v. Commonwealth, 173 Ky. 417, 191 S.W. 256 (1917); Blocker v. Commonwealth, 153 Ky. 304, 155 S.W. 723 (1913).

11. Story v. United States, 16 F.2d 342 (D.C. Cir. 1926); *Ex parte* Liotard, 47 Nev. 169, 217 Pac. 960 (1923); State v. Trott, 190 N.C. 674, 130 S.E. 627 (1925); Eager v. State, 325 S.W.2d 815 (Tenn. 1959); Brewer v. State, 143 S.W.2d 599 (Tex. Crim. App. 1940); James v. Commonwealth, 178 Va. 34, 16 S.E.2d 296 (1941); 3 WHARTON, CRIMINAL LAW AND PROCEDURE 62 (1957) ("One, who, being in the possession of an auto in the hands of an intoxicated person sits with the latter and permits him to operate the vehicle without protest may be convicted of the offense provided he knew of the condition of the one he let drive.").

12. People v. Rauch, 299 N.Y. Supp. 155 (1937).

13. State v. Walker, 204 Ore. 69, 80, 282 P.2d 344, 346 (1955). Although the court did not consider what might be a proximate cause, the language was broad enough so that the prior negligence of the defendant in loaning his car to an intoxicated person who committed involuntary manslaughter might be considered the proximate cause. The court said: "There may be more than one proximate cause of an accident, if each of the causes asserted can be seen to have been an efficient one, without which the injury resulting would not have been sustained. If the negligent acts of two or more persons concur in contributing to an accident, the injured person may hold them jointly and severally liable. Where concurrence in causes is charged, the test is, simply, could the accident have happened without their cooperation? 'Guilty of responsible concurrence in causing an injury involves

The definition of negligent homicide in the Louisiana Criminal Code is very similar to the Michigan involuntary manslaughter statute, in that both are concerned with death resulting from criminal negligence.[14] However, in Louisiana the violation of a statute or ordinance is only presumptive evidence of criminal negligence, whereas in Michigan the violation of a statute or ordinance automatically makes the defendant guilty of involuntary manslaughter without finding criminal negligence if he is a party to the crime. The Louisiana Criminal Code also provides that a person is a principal whenever he is "concerned in the commission of a crime, whether he is present or absent, and whether he directly commits the act constituting the offense, aids and abets in its commission, or directly or indirectly counsels or procures another to commit the crime."[15] It has been held in Louisiana that if a person driving a car kills someone as a result of operating the car in a grossly negligent manner he can be found guilty of negligent homicide.[16] However, there are no reported Louisiana cases dealing with the situation where the defendant was not driving.

Whether or not the prior negligence of lending an automobile to an intoxicated person will enable the state to convict the defendant of involuntary manslaughter has been settled for the present in the State of Michigan by the instant decision. The court said: "It is axiomatic that criminal guilt under our law is personal fault. It is of the very essence of our deep-rooted notions of criminal liability that guilt be personal and individual. A person cannot be held a principal with respect to a fatal accident where the killing was not counselled by him, accom-

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the idea of two or more active agencies cooperating to produce it; either of which must be an efficient cause, without the operation of which the accident would not have happened. * * * In every such case, the question is what was the proximate cause of the concurrence and, if concurrence in negligence is claimed, were the acts or omissions of the parties so closely related and co-operative as to make either a probable and an efficient cause? Could it be said of each cause that without its operation the accident would not have happened?' The mere fact that some other cause operated with the negligence of the defendant to produce the injury complained of does not relieve the defendant from liability. If the damage is caused by the concurring force of the defendant's negligence and some other cause for which he is not responsible, whether such other cause be of human origin or act of God, defendant is nevertheless responsible if his negligence is one of the proximate causes of the damage."

14. LA. R.S. 14:32 (1950), note 5 *supra*.

15. *Id.* 14:24: "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

16. State v. Venzant, 200 La. 301, 7 So.2d 917 (1942); State v. Porter, 176 La. 673, 146 So. 465 (1933); State v. Wilbanks, 168 La. 861, 123 So. 600 (1929).

plished by another acting jointly with him, nor occurring in the attempted achievement of some common enterprise. It is a basic proposition in a constitutional society that crimes should be defined in advance, and not after action has been taken." By declaring that criminal liability should be personal and individual the court decided that the defendant, in order to be convicted of involuntary manslaughter, must collaborate in the homicide.

Under a strict interpretation of the Michigan definition of principal, it would appear that the court in the instant case was correct in reversing the conviction because of a finding that the defendant was not a principal. However, it is submitted that although no case has been found upholding a conviction in a situation similar to that of the instant case, it appears that conviction in other states should be possible. If the defendant was criminally negligent in lending the car to a known drunk, his act was a cause of the negligent slaying. One court has stated that "the mere fact that some other cause operated with the negligence of the defendant to produce the injury does not relieve the defendant from liability."[17] Although in that case the defendant was in the car, it would seem that this language could include the negligence of a person who lends his car to another when he knows that the other is intoxicated or in such condition that he may cause death or serious injury. By the very act of lending his car when he knows that the driver, while in such condition, may cause death or serious injury to another he has committed what could be found to be a grossly negligent act. As for Louisiana, it would seem that the defendant could be found a co-principal. The Louisiana Criminal Code defines principals as "all persons concerned with the commission of a crime, whether present or absent."[18] In this situation, the defendant is certainly concerned with the death, for he has put a known dangerous force in motion and the very sort of injury expectable, *i.e.*, a traffic accident, has occurred. It is hoped that the Louisiana courts will adopt this position when the issue is presented.

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17. State v. Walker, 204 Ore. 69, 81, 282 P.2d 344, 346 (1955).
18. LA. R.S. 14:24 (1950).