



1962

Homicide - Manslaughter - Casual Connection between Act and Death under Misdemeanor-Manslaughter Rule

Mark J. Butz

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Butz, Mark J. (1962) "Homicide - Manslaughter - Casual Connection between Act and Death under Misdemeanor-Manslaughter Rule," *North Dakota Law Review*. Vol. 38 : No. 1 , Article 13.

Available at: <https://commons.und.edu/ndlr/vol38/iss1/13>

This Case Comment is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.commons@library.und.edu.

course since the attorney is an officer of the court and other personal sanctions are available against him. Also, if the statute of limitations has run on the action and the counsel's negligence results in the dismissal, with or without prejudice, the client may sue the attorney as pointed out earlier.²⁶

RONALD G. SCHMIDT

HOMICIDE—MANSLAUGHTER—CASUAL CONNECTION BETWEEN ACT AND DEATH UNDER MISDEMEANOR-MANSLAUGHTER RULE—

The defendant gave the keys of his automobile to an intoxicated person who, while driving the car, became involved in a collision with another car, killing both drivers. Defendant was found guilty of involuntary manslaughter. On appeal, the Supreme Court of Michigan *held*, the defendant was not guilty of the crime charged because the death was not counselled by him, nor accomplished by another acting jointly with him, nor did it occur in the attempted achievement of some common enterprise. He was, however, found guilty of a misdemeanor for allowing an intoxicated person to drive his car.¹ *People v. Marshall*, 106 N.W. 2d 842 (Mich. 1961).

The courts have been concerned with the applicability of the misdemeanor rule in two types of cases; those in which the defendant participates in the act causing death and those in which he is not present when the death occurs.

Illustrative of the former is *Story v. United States*² on which the prosecution relied. This case was one of direct participation for the defendant was a passenger in his own car and permitted an intoxicated person to drive. A pedestrian was killed and a conviction of manslaughter was upheld. Because of his degree of participation, the defendant in *Ex Parte Liotard*³ was convicted on substantially the same reasoning. Further exemplification of conviction where the defendant participated in the very act which resulted in death is *State v. Hopkins*.⁴ In that case the defendant was convicted of the offence for aiding and abetting its commission.

Similarly, the courts find no difficulty in convicting a defendant on the rationale of the misdemeanor-manslaughter rule in cases where someone is killed while the defendant is

26. See, *supra* note 22.

1. Mich. Comp. Laws § 625(b).

2. *Story v. United States*, 16 F.2d 342 (D.C. Cir. 1926).

3. *Ex Parte Liotard*, 47, Nev. 169, 217 Pac. 960 (1923) (Riding on running board).

4. *State v. Hopkins*, 147 Wash. 198, 265 Pac. 481 (1928).

driving under alcoholic influence.⁵

These cases in which the defendant was present during the act which caused death are clearly within the scope of the misdemeanor-manslaughter rule. However, in fact situations in which the death occurs apart from the defendant's presence, but where his misdemeanor had put the force in motion, the courts are presented with a more difficult question.

The test most commonly applied in restricting the application of the rule is that of "proximate cause". The misdemeanor must, within the limits of legal causation and foreseeability, have been the "proximate cause" of the death.⁶

To illustrate the problem confronting the courts in these situations; the defendant in *Commonwealth v. Williams*,⁷ driving without a driver's license and involved in a fatal accident, was acquitted because the death was not in consequence of the violation. It must be proved that there is more than mere "coincidence of time and place" between the misdemeanor and the death to sustain the charge of involuntary manslaughter.⁸ In addition, there must be a clear connection between cause and effect.⁹

In at least two cases North Dakota has prosecuted on the misdemeanor-manslaughter rule.¹⁰ In both instances convictions were upheld because the culpable negligence was proved to be the proximate cause of death.

To convict the defendant in the instant case would be to apply the misdemeanor-manslaughter rule too strictly, operating in derogation of the concept of proximate cause. The decision rendered is based on logic and should serve as a guide in future litigation involving a similar problem.

MARK J. BUTZ

NEGLIGENCE—ACTS OR OMISSIONS—LIABILITY OF BUILDING CONTRACTORS FOR INJURY TO THIRD PARTY AFTER ACCEPTANCE

5. *People v. Townsend*, 214 Mich. 267, 183 N.W. 177 (1921); *State v. Kline*, 168 Minn. 263, 209 N.W. 881 (1926); *Maxon v. State*, 177 Wis. 319, 187 N.W. 753 (1922).

6. *Kimmel v. State*, 198 Ind. 444, 154 N.E. 16 (1926); *State v. Satterfield*, 198 N.C. 682, 153 S.E. 155 (1930); *State v. Minko*, 46 N.E.2d 469, 470 (Ohio 1940), "Unlawful killing, as used in manslaughter, must be such as would naturally, logically, and proximately result from the commission of some unlawful act as defined by statute, and . . . must be one that would be reasonably anticipated by an ordinarily prudent person as likely to result in such killing."

7. *Commonwealth v. Williams*, 133 Pa. Super. 104, 1 A.2d 812 (1938).

8. *Maxon v. State*, 177 Wis. 319, 187 N.W. 753, 755 (1922).

9. *Ibid.*

10. *State v. Tjaden*, 69 N.W.2d 272 (N.D. 1955) (Bus driver collided with parked car killing occupant); *State v. Gulke*, 38 N.W.2d 722 (N.D. 1949) (Reckless driver killed bicycle rider).