

CHAPTER 11: HOMICIDE

The various types of homicide in Ohio were discussed in Chapter 5 regarding mens rea and intent. Despite this, it is necessary to discuss the seven types of homicide that are listed in the Ohio Revised Code. Each of these is discussed in the text under similar names; however, one of the types of homicide in Ohio, aggravated vehicular homicide, merits special attention.

Aggravated Murder

Aggravated murder is the most serious form of homicide in Ohio. It is equivalent to “first-degree murder” or “capital murder” defined in the text. There are five types of aggravated murder in Ohio:

no person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another’s pregnancy.

no person shall purposely cause the death of another or the unlawful termination of another’s pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape.

no person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

no person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

no person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer...

(Ohio Revised Code, §2903.01, 2002).

As noted, these provisions include murder committed during the course of a felony (felony murder) and murder committed while an individual is incarcerated. It also includes the murder of particular victims – those under thirteen years of age and law enforcement officers. Note that the “unlawful termination of another’s pregnancy” is included in the statute. This will be discussed later.

Aggravated murder contains the “purposely” level of culpability, the highest level of culpability in Ohio. This is when an offender specifically intends to cause a certain result – the offender wants to kill their victim. Also, the murder must be planned beforehand (“with prior calculation and design”). Those who are convicted of aggravated murder face life imprisonment or the death penalty.

An example of an aggravated murder case is found during a prison riot in Ohio’s Lucasville Prison, in which five inmates were convicted and sentenced to death for the murder of several inmates and a corrections officer. The case is *State v. Skatzes*, 2003 Ohio 516 (2003), from Ohio’s Second District Court of Appeal, and the following information was taken directly from the case.

State v. Skatzes

The offenses in question arose from an eleven day prison riot in the L- block at the Southern Ohio Correctional Facility at Lucasville in April 1993. The L-block at Lucasville consisted of a large central corridor with four cellblocks extending from each side and a gymnasium at one end. Each of the eight cellblocks contained 80 cells, 40 on the lower level and 40 on the upper level accessed by a catwalk. Each cellblock also contained restrooms, showers, and unit offices at the end near the central corridor and a locked stairwell at the rear. A recreation yard was accessible through a door in the gymnasium. The eight cellblocks were labeled L-1 through L-8, and the cells within each cell block were numbered 1 through 80. Thus, L-6-60 indicated cell 60 in cellblock 6.

The state's evidence established the following. The riot was planned by the prison's primary gangs: the Aryan Brotherhood, a white supremacist group, the Muslims, who were mostly black, and the Black Gangster Disciples, who focused on making money rather than on any philosophical viewpoint. It was unusual for these groups to work together. The Muslims were upset on religious grounds by mandatory tuberculosis testing scheduled to begin on Monday, April 12, 1993, and the Aryan Brotherhood was upset by racial integration in inmate housing.

On April 11, 1993, Easter Sunday, the riot began in L-block at approximately 3:00 p.m. as inmates from one or two cellblocks were returning from the recreation yard. The prison was short-staffed that day because of the holiday. The inmates overpowered the corrections officers in the gymnasium and in the central corridor, beat them, and took their keys. Within a relatively short period of time, the various cell blocks and individual cells throughout L-block were unlocked, and the inmates were released into the common areas. The corrections officers who had been staffing the cellblocks fled to the locked restrooms and stairwells for safety pursuant to prison policy, but inmates broke through metal doors and cinder block walls using weight bars and furniture and took them hostage. The corrections officers were beaten, some seriously, then were gathered in designated areas and changed into inmate clothing. Meanwhile, the gangs positioned inmate guards at the door to the recreation yard to prohibit inmates from leaving L-block. Over four hundred inmates remained inside L-block for the duration of the riot.

The initial hours of the riot were characterized by chaos, random destruction of prison property, and violence against inmates who were believed to be "snitches" or against whom others had personal vendettas. However, the leaders of the three gangs worked together and organization began to emerge. The most seriously injured corrections officers were released onto the recreation yard, and the bodies of several murdered inmates, were deposited there as well. Gang members armed themselves with a wide variety of makeshift weapons, established internal rules, designated security officers, and began telephone negotiations with authorities. Each gang occupied a designated area, and each held some of the hostages. Authorities cut off power and water to L-block.

Skatzes and another inmate were the leaders of the Aryan Brotherhood during the riot. Skatzes was one of the primary negotiators with the authorities during the early days of the riot and identified himself to the authorities. Along with the other inmate negotiators, Skatzes presented a list of demands compiled by gang members and other inmates. The demands related to prison conditions generally, such as the tuberculosis testing and the racial integration, and to conditions as they existed during the course of the riot, such as the need for food drops and the inmates' desire that water and power be restored to L-block. Officials began audio taping these telephone

negotiations on April 13. They also installed microphones in tunnels that ran underneath L-block, which were able to record some of the inmates' conversations, including some of the meetings of the gang leaders ("the tunnel tapes").

As days passed, there was some unhappiness and restlessness among the gang leaders about the lack of progress in the negotiations. These feelings were exacerbated by an April 14 television broadcast by a spokesperson for the Department of Rehabilitation and Corrections, which seemed to disparage the inmates' threat to kill a hostage. During telephone negotiations on the morning of April 15, Skatzes repeated the gangs' demand that water and power be restored to L-block, and he specified that, if the state did not comply by 10:30 a.m., "it's a guaranteed murder." The state did not comply, and at 11:10 a.m., the body of a corrections officer was placed on the recreation yard by four inmates.

Later that day, the gang leaders agreed to release a hostage in exchange for making a radio broadcast regarding their demands. Skatzes made the radio broadcast on behalf of the inmates that night, and a corrections officer was released. Because many inmates and gang members were disappointed with Skatzes' presentation of their demands in the radio broadcast, his role in the negotiations diminished after this point.

After several more days of negotiation and after consulting with an attorney, the gang leaders agreed to a surrender on April 21, 1993. The surrender occurred over several hours as small groups of inmates were processed by the authorities. The gang leaders were the last inmates to surrender, and the remaining hostages were released. Some murders and attempted murders occurred during the surrender, including the murder of an inmate, whose body was found when the authorities reentered L-block. As part of their agreement with the authorities, over one hundred gang members were transferred out of Lucasville immediately upon their surrender.

When the authorities entered L-block to conduct their investigation, they found vast destruction of prison property. For example, almost all of the windows, toilets, and sinks had been smashed, pipes had been exposed, and fires had been set. Because of the vast destruction, the number of inmates involved, and the elapsed time, the authorities were unable to uncover physical evidence linking crimes to particular inmates. Thus, they built cases based largely upon the testimony of other inmates. In all, fifty inmates were charged with felonies, and many more were disciplined administratively following the riot.

Skatzes was indicted and convicted of the aggravated murders of the two inmates and the corrections officer, as well as three counts of kidnapping for taking them hostage. He was sentenced to death. When examining the aggravated murder statute, four of the aggravated murder specifications were seen in this case: the purposeful killing of another, murder during a kidnapping (felony murder), murder committed by someone under detention and who had been previously convicted of a felony, and murder of a law enforcement officer.

Murder

“Murder” in the Ohio Revised Code is similar to the “second-degree” murder definition found in the text. It is defined as,

no person shall purposely cause the death of another or the unlawful termination of another’s pregnancy;

no person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree (Ohio Revised Code, §2903.02, 1998).

Murder involves the purposeful killing of another, but without the requisite "prior calculation and design" found in the aggravated murder statute. Murder is punishable by a prison term of fifteen years to life imprisonment; however, this increases to life without parole if the offender committed the offense with a "sexual motivation" and is considered a sexual predator (Ohio Revised Code, §2929.02 (B), 1998).

Voluntary Manslaughter and Involuntary Manslaughter

Voluntary manslaughter is typically described as a "heat of passion" homicide. As such, it is defined as,

no person, while under the influence of sudden passion or in sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy (Ohio Revised Code, §2903.03, 1996).

Voluntary manslaughter is treated as a first-degree felony in Ohio.

According to the text, involuntary manslaughter involves negligence on the part of the offender. Under Ohio law, however, the negligence level of culpability is not used. Instead, involuntary manslaughter is defined as,

no person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony (Ohio Revised Code, §2903.04, 2004).

Involuntary manslaughter also involves the death of another while committing or attempting to commit a misdemeanor. As indicated earlier, murder is defined as causing the death of another while committing or attempting to commit a first- or second-degree felony. If an individual causes the death of another while attempting to commit a third-, fourth-, or fifth-degree felony or a misdemeanor, he can be charged with involuntary manslaughter. Involuntary manslaughter during the commission of a felony is considered a first-degree felony; during the commission of a misdemeanor, it is considered a third-degree felony.

The involuntary manslaughter statute makes an exception for murder committed while driving while intoxicated (DWI). The reason for this is that Ohio defines "aggravated vehicular homicide" as a crime, and DWI is included under this statute.

Aggravated Vehicular Homicide

Aggravated vehicular homicide encompasses deaths caused by someone operating a vehicle while intoxicated, or simply operating it recklessly or negligently, regardless of intoxication. Homicide caused by DWI, operating a vehicle recklessly, and operating a vehicle negligently are separate provisions in this statute. For example, if an individual is speeding and this results in a homicide, that individual can be charged with one count of aggravated vehicular homicide based

on the “reckless” provision of the statute. Additionally, if this individual was also DWI, he can be charged with a second count of aggravated vehicular homicide based on the DWI provision of the statute. Aggravated vehicular homicide when DWI is considered a second-degree felony, which increases to a first-degree felony if the offender was under some sort of driving suspension. Aggravated vehicular homicide while reckless is considered a third-degree felony, which increases to a second-degree felony if the offender was under some sort of driving suspension. Aggravated vehicular homicide while negligent is treated as a first-degree misdemeanor, increasing to a fourth-degree felony if driving suspension is present (Ohio Revised Code, §2903.06, 2004).

Reckless and Negligent Homicide

The final two types of homicide found in the Ohio Revised Code are reckless homicide and negligent homicide. Reckless homicide is “recklessly causing the death of another or the unlawful termination of another’s pregnancy.” This offense is considered a third-degree felony. (Ohio Revised Code, §2903.041, 1999). Negligent homicide involves negligently causing the death of another or the unlawful termination of another’s pregnancy by use of a deadly weapon or other dangerous ordnance. Negligent homicide is a first-degree misdemeanor (Ohio Revised Code, §2903.05, 1996).

Unlawful Termination of Another’s Pregnancy

The text discusses the killing of the unborn in relation to viability, or when the fetus can survive outside the mother’s womb. Ohio law criminalizes the “unlawful termination of another’s pregnancy,” which is defined as,

...causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs (Ohio Revised Code, §2903.09 (A), 2000).

The statute makes an exception for legal abortion, but criminalizes conduct that purposely, knowingly, recklessly, or negligently kills an embryo or fetus. Viability is not an issue under Ohio law. This was addressed in *State v. Coleman*, 124 Ohio App. 3d 78 (1997) from Ohio’s Tenth District Court of Appeal.

State v. Coleman

The defendant in this case was convicted of involuntary manslaughter for unlawfully terminating another’s pregnancy while committing a misdemeanor. The defendant was engaging in domestic violence against his girlfriend and, while beating his girlfriend, terminated the pregnancy. His girlfriend was injured, but did not die.

The defendant claimed that his conviction was unconstitutional because it criminalized the termination of a pregnancy before the fetus was viable. He claimed that, since the fetus was not viable, the state cannot criminalize its termination as a homicide. The defendant relied on U.S. Supreme Court cases *Roe v. Wade* and *Planned Parenthood v. Casey*, claiming that these cases prohibit states from imposing restrictions on pregnancy termination before viability. The court also relied on *Roe* and *Casey*, stating that the U.S. Supreme Court recognized a state’s interest in

protecting the unborn. Although *Roe* gave a fundamental right to terminate a pregnancy before viability, it gave the right to the mother of the child (and the mother's doctor), not to a third party. Therefore, although a mother has the ability to terminate a pregnancy, someone else does not. The court did not rely on the viability issue in this case. Instead, it noted that the unborn is protected from unlawful termination by a third party from fertilization onward.

REFERENCES

Ohio Revised Code, www.ohio.gov/ohio/ohiolaws.html

State v. Coleman 124 Ohio App. 3d 78 (1997)

State v. Skatzes 2003 Ohio 516 (2003)

REVIEW QUESTIONS

1. What is the level of culpability required for aggravated murder in Ohio?
 - a. knowingly
 - b. purposely
 - c. recklessly
 - d. negligently

2. What is the primary difference between murder and involuntary manslaughter under Ohio law?
 - a. murder requires the "recklessly" level of culpability, while involuntary manslaughter requires "negligently"
 - b. murder is considered a felony, whereas involuntary manslaughter is only considered a misdemeanor
 - c. murder can involve felony murder when the other felony is a first- or second-degree felony, whereas involuntary manslaughter can involve felony murder when the other felony is a third-, fourth-, or fifth-degree felony
 - d. murder is punishable by the death penalty; involuntary manslaughter is punishable by life imprisonment

3. Which of the following is true regarding aggravated vehicular homicide in Ohio?
 - a. the punishment varies depending on the level of culpability involved
 - b. it only applies when individuals are driving while intoxicated
 - c. a defendant can be convicted of this offense as well as manslaughter
 - d. it only applies when an offender is driving with a suspended license

DISCUSSION QUESTION

Ohio law criminalizes the unlawful termination of another's pregnancy, regardless of the gestational age of the embryo/fetus. Exceptions are created for lawful abortions, etc., but individuals can be held criminally liable if an embryo or fetus is killed, even if the mother survives. What is your opinion of these laws? Is an embryo or fetus considered a "person," thus protected by the criminal law? Explain.

WEB RESOURCES

- www.ncsl.org/programs/health/fethom.htm - website of the National Conference of State Legislatures provides information about fetal homicide laws throughout the country
- www.drc.state.oh.us/web/Articles/article24.htm - from the Ohio Department of Rehabilitation and Correction, this article provides information about the aftermath of the Lucasville prison riot discussed in *State v. Skatzes*
- www.statepatrol.ohio.gov/FAQsDUI.htm - website of the Ohio State Patrol provides information about driving while intoxicated