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## State v. Crawford 2022-Ohio-1509

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# Ohio Northern University Law Review

## Student Case Notes

### State v. Crawford 2022-Ohio-1509

#### I. INTRODUCTION

In *State v. Crawford*, the Supreme Court of Ohio was called upon to consider predicate felony offenses and their relationships to a victim's death in the wake of a heated argument that culminated in a fatal shooting.<sup>1</sup> Under the Ohio Revised Code, a person can be found guilty of involuntary manslaughter if he or she causes the death of another as a proximate result of committing another felony.<sup>2</sup> As interpreted by Ohio courts, this provision requires two distinct events to occur before a person can be convicted of involuntary manslaughter: (1) a felony must be committed and (2) a person's death must occur as a proximate result of that felony.<sup>3</sup>

In this case, the court faced the issue of whether having a weapon under disability could serve as the predicate felony offense to involuntary manslaughter when the disability was due to a previous conviction for attempted drug possession and had no causal relationship to the death of the victim.<sup>4</sup> The court held that the plain language of the statute makes no requirement that the reason for a disability be causally connected to the victim's death.<sup>5</sup> The fact that the circumstances behind a firearm disability are unrelated to the cause of a victim's death is inconsequential, all that is of consequence is whether the harm alleged has a sufficiently close connection to the conduct at issue.<sup>6</sup> If the defendant violates the weapons-while-under-

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1. *State v. Crawford*, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶ 1.

2. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

3. *Crawford* at ¶ 14.

4. *Id.* at ¶ 13.

5. *Id.* at ¶ 14.

6. *Id.* at ¶ 16.

disability statute by using a firearm and that use results in the death of another person, then the elements of involuntary manslaughter are satisfied.<sup>7</sup>

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

An argument at a late-night party spiraled out of control and into the streets and resulted in the death of Gary Dickens.<sup>8</sup> Jeremy Crawford arrived at the party in Cleveland with a man referred to as “Prince” to meet up with Crawford’s girlfriend.<sup>9</sup> A majority of the partygoers were under the influence of alcohol, cocaine, or ecstasy, and were a mix of both Crawford’s and his girlfriend’s family members.<sup>10</sup> Immediately upon arrival, Crawford was confronted by a member of his girlfriend’s family and Dickens.<sup>11</sup>

Dickens and Crawford had a history of violent altercations.<sup>12</sup> After a verbal threat from Dickens, the two men and Prince moved the confrontation to the street.<sup>13</sup> As the situation progressed, Crawford produced a firearm and fired multiple shots into the air.<sup>14</sup> It is not clear from the testimony and other evidence as to who fired the shots that killed Dickens, as accusations were placed on Crawford as well as Prince.<sup>15</sup> Crawford told witnesses that he did kill the victim, but he also stated that he only fired shots into the air and that it was Prince who fired the fatal shots.<sup>16</sup>

Crawford was charged with “(1) discharging a firearm on or near prohibited premises [,] . . . (2) felony murder [,] . . . (3) having a weapon while under disability [,] . . . and (4) involuntary manslaughter, with the weapons-while-under-disability offense serving as the predicate felony offense.”<sup>17</sup> A jury found Crawford guilty of having weapons while under disability and involuntary manslaughter.<sup>18</sup> The jury did not specify how Crawford had violated the weapons-while-under-disability statute, which makes it a crime to “knowingly acquire, have, carry [,] or use” a firearm.<sup>19</sup> The jury also found Crawford guilty of the unlawful discharge of a firearm but found no showing of the discharge causing serious physical harm, so the court reduced the charge to a misdemeanor.<sup>20</sup> The evidence did not clearly

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7. *Id.*

8. *Crawford* at ¶ 5.

9. *Id.* at ¶ 6.

10. *Id.* at ¶¶ 6-7.

11. *Id.* at ¶ 7.

12. *Id.*

13. *Crawford* at ¶¶ 5, 7.

14. *Id.* at ¶ 7.

15. *Id.* at ¶ 8.

16. *Id.* at ¶ 9.

17. *Id.* at ¶ 10.

18. *Crawford* at ¶ 11.

19. *Id.* at ¶¶ 11-12.

20. *Id.* at ¶ 11.

show who shot and killed Dickens.<sup>21</sup> Crawford was found not guilty of felony murder.<sup>22</sup>

Crawford appealed to the Eighth District Court of Appeals, asserting that the crime of having a weapon while under disability could not serve as the underlying proximate cause of a victim's death.<sup>23</sup> He alleged that the crime of having a weapon while under a disability is generally a possession crime, that it cannot serve as the predicate felony offense for involuntary manslaughter because mere possession of a firearm cannot proximately cause injury.<sup>24</sup> This argument was rejected by the court of appeals because the statute encompassed more than just possession, and the evidence showed Crawford had used, brandished, and fired the firearm, which supported the jury's finding that Dickens's death was the proximate result of Crawford's violation of the weapons-while-under-disability statute.<sup>25</sup>

Crawford appealed to the Ohio Supreme Court, presenting solely on his conviction for involuntary manslaughter.<sup>26</sup> He proposed that "[h]aving a weapon under disability cannot, in the ordinary course of things, serve as the predicate offense to involuntary manslaughter."<sup>27</sup> Crawford conceded that the statute made it illegal for Crawford to "'knowingly acquire, have, carry, or use' the weapon[,] . . . [but focused on the fact that the actual] offense was doing one of those things while under a disability due to a prior charge of conviction of attempted drug possession."<sup>28</sup> Under this interpretation, the essence of the offense is the disability due to attempted drug possession, as illustrated by the statute's title.<sup>29</sup> The disability must be necessary to the proximate result in order for the death of a person to be a proximate result of having a weapon while under a disability due to a drug offense.<sup>30</sup> Crawford posed that the appropriate question, in this case, was "whether the disability due to attempted drug possession has any causal relationship to the death."<sup>31</sup> The death must be related to the circumstance under which made the activity of using a firearm illegal for the violation of the weapons-while-under-disability statute to be the predicate felony offense for involuntary manslaughter.<sup>32</sup>

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21. *Id.* at ¶ 12.

22. *Id.* at ¶ 11.

23. *Crawford* at ¶ 12.

24. *Id.*

25. *Id.*

26. *Id.* at ¶¶ 12-13.

27. *Id.* at ¶ 13.

28. *Crawford* at ¶ 13.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

### III. THE COURT'S DECISION AND RATIONALE

#### A. *Majority Opinion by Justice DeWine*

The majority began by noting that, under Crawford's logic, Crawford's felony offense could not have served as the predicate offense for involuntary manslaughter because his prior drug offense did not cause the victim's death.<sup>33</sup> However, the court rejected this logic and affirmed the decisions of the lower courts by holding that there is "no requirement that the underlying reason for the disability [of the defendant] be causally related to the victim's death" to serve as the predicate offense for involuntary manslaughter.<sup>34</sup>

The court derived its holding from the plain text of the involuntary-manslaughter statute.<sup>35</sup> R.C. 2903.04(A) states that "[n]o person shall cause the death of another . . . as a proximate result of the offender's committing or attempting to commit a felony."<sup>36</sup> The court explained that "[n]othing in the statute text requires any connection between the reason for the disability and the death of the victim."<sup>37</sup> The majority goes into further detail on the "proximate result" language in the statute.<sup>38</sup> Justice DeWine emphasized that other courts across the state have recognized that "proximate result" is simply another term for "proximate cause."<sup>39</sup> To this point, the court said that "foreseeable harm is what matters for proximate cause" not that the underlying circumstances of the firearm disability are unrelated to the victim's cause of death.<sup>40</sup> It looked no further than the text of the statute, and thus only asked one question: "Does 'the harm alleged [have] a sufficiently close connection to the conduct' at issue?"<sup>41</sup> The majority addressed the question, saying that Crawford was undisputedly prohibited from having a firearm and that the elements of involuntary manslaughter are properly satisfied if the defendant uses a firearm in violation of the weapons-under-disability statute and the finder of fact can conclude that the defendant's use of the firearm proximately resulted in the death of another.<sup>42</sup>

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33. *Crawford* at ¶ 13.

34. *Id.* at ¶ 18.

35. *Id.* at ¶ 14.

36. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

37. *Crawford* at ¶ 14.

38. *Id.* at ¶ 15.

39. *Id.* (citing *State v. Carpenter*, 2019-Ohio-58 at ¶ 51, 128 N.E.3d 857, 878 (3d Dist.); see also *State v. Owens*, 162 Ohio St.3d 596, 2020-Ohio-4616, 166 N.E.3d 1142, at ¶ 9.

40. *Crawford* at ¶ 16.

41. *Id.* (quoting *Roberts v. United States* 572 U.S. 639, 645 (2014) (quoting *Lexmark Int'l. Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133 (2014))).

42. *Crawford* at ¶ 17.

In closing, Justice DeWine rejected the legal arguments presented by Crawford and affirmed the judgment of the Eighth District Court of Appeals upholding his conviction for involuntary manslaughter.<sup>43</sup>

*B. Dissenting Opinion by Justice Donnelly*

Justice Donnelly, joined by Justice Stewart and Justice Brunner, expressed fundamental issues with the court's holding, not because they disagreed with the majority on a theoretical case, but because the dissenting justices believe that the case should have been dismissed as having been "improvidently accepted."<sup>44</sup> Justice Donnelly instead focused on errors at the trial court level that were not addressed by Crawford in his proposition of law.<sup>45</sup> He believed that the majority's opinion was unnecessary because the record makes clear that neither Crawford nor his gun was believed to be the cause in fact of the death of Dickens.<sup>46</sup>

Justice Donnelly began by pointing out that the parties did not dispute that Crawford had a gun on the night in question and that he fired it, but also did not dispute that Anthony "Prince" Barnes also fired his own gun that night.<sup>47</sup> He emphasized that the eyewitness testimony indicated that Prince fired the fatal shots, not Crawford.<sup>48</sup> Justice Donnelly was quick to note that the jury found that "Crawford's act of shooting the gun did not proximately cause Dickens's death [,]" but Crawford's possession of the gun did, which would make the verdicts seem irreconcilable.<sup>49</sup> However, Justice Donnelly criticized the instructions the jury received regarding the elements of involuntary manslaughter and declared that this irreconcilability could be a result of those instructions.<sup>50</sup>

In his analysis, Justice Donnelly asserted that the trial judge did not explain proximate cause in the context of the distinct offense of involuntary manslaughter and relied on a previous explanation from the felony murder charges.<sup>51</sup> He agreed this was not problematic on its face, but rather the brevity of the instructions and their lack of detail was significantly impacted "by the state's explanation of the meaning of the involuntary-manslaughter instructions presented in its closing argument."<sup>52</sup> Justice Donnelly found it concerning that the state repeatedly said it did not matter whether or not

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43. *Id.* at ¶ 18.

44. *Id.* at ¶ 19. (Donnelly, J., dissenting).

45. *Id.*

46. *Id.* at ¶ 20.

47. *Crawford* at ¶ 21.

48. *Id.*

49. *Id.* at ¶ 23.

50. *Id.* at ¶¶ 23-24.

51. *Id.* at ¶ 24.

52. *Crawford* at ¶ 24.

Crawford personally shot Dickens because it was enough that Crawford brought a gun to the scene and started a chain of events that ultimately resulted in the death of Dickens.<sup>53</sup> He then explained that the state seemed to admit Crawford was not the one who fired the fatal shots.<sup>54</sup> Justice Donnelly believed the state did not present sufficient evidence that Crawford's gun use was the proximate cause of Dickens's death and that the jury was misled by the state's misrepresentation of the causation element of involuntary manslaughter.<sup>55</sup>

However, as noted by Justice Donnelly, these issues were not preserved by Crawford for review, and Justice Donnelly admitted that the majority correctly presumed there was no lack of evidence to prove Crawford's gun use was the proximate cause of Dickens's death.<sup>56</sup> He stressed that the majority's holding should never be applied to cases outside of the narrow focus presented in this case.<sup>57</sup> Instead of issuing an opinion on this case, Justice Donnelly would have chosen not to reach a decision at all and dismiss the case as having been improvidently accepted because Crawford's argument did not allow the majority to reach the true flaws of the case.<sup>58</sup>

#### IV. ANALYSIS

Whether a predicate offense exists is imperative to any event involving the death of another because both the offense's nature and presence play a role in determining the severity of the charge the defendant will face.<sup>59</sup> In Ohio, when that predicate offense is a misdemeanor, the defendant will likely be charged with a third-degree felony and face up to three years in prison.<sup>60</sup> But when the predicate offense is a felony, that charge rises to a first-degree felony, and the defendant will face a maximum sentence of eleven years.<sup>61</sup> In *Crawford*, the court held that having weapons-while-under-disability, a felony of the third degree, serves as a predicate felony offense for an involuntary manslaughter conviction even though the reason for the disability is not causally related to the victim's death.<sup>62</sup>

This Note analyzes (1) other applications of O.R.C 2903.04 and the relationships between the predicate felonies and involuntary manslaughter,

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53. *Id.* at ¶ 25.

54. *Id.*

55. *Id.* at ¶ 27.

56. *Id.*

57. *Crawford* at ¶ 27.

58. *Id.*

59. Jeffery Goldsmith, *Involuntary Manslaughter: Review and Commentary on Ohio Law*, 40 OHIO ST. L.J. 569, 588 (1979).

60. OHIO REV. CODE ANN. § 2929.14(A)(3)(b) (West 2022).

61. OHIO REV. CODE ANN. § 2929.14(A)(1)(a) (West 2022).

62. *Crawford* at ¶ 18.

and (2) possible ramifications of applying this court’s holding to other involuntary-manslaughter cases.

*A. Do Other Cases Reveal Causal Relationships Between Predicate Offenses and Involuntary Manslaughter?*

Crawford’s particular predicate offense issue is more complicated than most because his conviction rests on the fact that he did knowingly acquire, have, carry, or use a firearm, with the “while under disability” part of the statute seemingly being rendered moot by the court’s opinion.<sup>63</sup> As pointed out by the majority in *Crawford*, there is nothing in the plain text of the statute that says the circumstances behind the predicate felony offense itself must be related to the cause of the death of the victim.<sup>64</sup> While there is nothing in the plain terms of the statute that points to any required causal relationship between the underlying circumstances of the predicate felony and the death of the victim, other Ohio decisions on this topic seem to reveal a tradition of causal relationships between the two.<sup>65</sup> When reading O.R.C. 2923.13 in its entirety, it is arguable that both the fact that the offender had a weapon and the reason for the disability must be proximately related to the victim’s death to serve as the predicate felony.<sup>66</sup>

It is well-established that an entire statute is effective when it is enacted, and that courts are called to apply statutes as written rather than supplementing or omitting portions of the statutes.<sup>67</sup> To be in accordance with this principle, is a court required to read and apply every portion of a felony to be relevant for that offense to serve as the predicate offense for involuntary manslaughter? Little guidance exists on this point to divulge a true answer. Assuming that O.R.C. 2923.13 is treated the same way as any other statute, the provision contains two elements that must be proven for a violation: (1) a person must knowingly acquire or use a firearm, (2) and that person must be under some disability as outlined in the provision.<sup>68</sup>

In *Crawford*, the defendant had a firearm and had been previously convicted of attempted drug possession which would qualify as a disability.<sup>69</sup> Those facts are not in dispute.<sup>70</sup> However, the court’s decision seems to omit the second element from its “proximate result” analysis and focuses only on

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63. *See id.* at ¶¶ 14, 17.

64. *Id.* at ¶ 14.

65. Dana Cole, *Expanding Felony-Murder in Ohio: Felony-Murder or Murder-Felony*, 63 OHIO ST. L.J. 15, 17-18 (2002).

66. OHIO REV. CODE ANN. § 2923.13(A)(3) (West 2022).

67. Larry M. Eig, *Statutory Interpretation: General Principles and Recent Trends* 4, CONG. RES. SERV. (Sept. 24, 2014).

68. OHIO REV. CODE ANN. § 2923.13(A) (West 2022).

69. *Crawford* at ¶ 1.

70. *Id.* at ¶¶ 1-3.



the fact that the defendant had a weapon.<sup>71</sup> A cardinal rule of statutory interpretation is to draw upon the entire statute when applying the law.<sup>72</sup> If that is the case, both elements of the offense must be necessary for the proximate result to qualify as a predicate offense for involuntary manslaughter.<sup>73</sup>

Other decisions show a causal correlation between the predicate offenses and involuntary manslaughter.<sup>74</sup> In *State v. Williams*, a defendant was properly convicted of felony manslaughter, with the predicate felony offense being drug trafficking when the victim's cause of death was a fentanyl overdose from the drugs provided to the victim by the defendant.<sup>75</sup> Similarly, in *State v. Berry*, a defendant's conviction for involuntary manslaughter was proper again where the underlying felonious act was trafficking in drugs and the victim died after taking the drugs sold to her by the defendant.<sup>76</sup> These two decisions illustrate a causal relationship between each part of the predicate offenses and the death of the victim. This need for a causal relationship is illustrated by the Fifth District Court of Appeals decision in *State v. DeMastry*.<sup>77</sup> The court determined that when the predicate offense for involuntary manslaughter is driving while under suspension, a conviction for involuntary manslaughter cannot be upheld because the underlying offense was not relevant to the quality of driving which caused the victim's death.<sup>78</sup> While technically distinguishable from the court's holding in *Crawford*, the reasoning is appropriately analogous.<sup>79</sup> If all elements of the predicate felony offense are not relevant to the cause of the victim's death, then the offense cannot serve as the predicate felony.<sup>80</sup>

"No person shall cause the death of another . . . as a proximate result of the offender's committing or attempting to commit a felony."<sup>81</sup> Absent other guidance, each element of the predicate offense should be considered in light of the circumstances when determining whether the victim's death was the proximate result of the felonious conduct.<sup>82</sup> The doctrine of proximate cause

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71. *Id.* at ¶ 18.

72. Eig, *supra* note 67, at 4.

73. OHIO REV. CODE ANN. § 2923.13(A) (West 2022); Guyora Binder, *Making the Best of Felony Murder*, 91 B.U. L. REV. 403, 427 (2011).

74. Cole, *supra* note 65, at 17-18.

75. *See also* *State v. Williams*, No. 2020-Ohio-4430, slip op. at ¶ 1.

76. *See also* *State v. Berry*, No. 2021-Ohio-2615, 2021 WL 1245031 at ¶ 21 (Apr. 5, 2021).

77. *See* *State v. DeMastry*, 193 Ohio App. 3d 495, 2011-Ohio-1320, 952 N.E.2d 1151, at ¶ 60.

78. *Id.*

79. *Compare id.*, with *State v. Crawford*, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶ 13.

80. John O'Herron, *Felony Murder without a Felony Limitation: Predicate Felonies and Practical Concerns in the States*, 46 CRIM. LAW BULLETIN Art. 4 1, 2.

81. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

82. Binder, *supra* note 73, at 438.

is known for its confusing contours and troublesome analyses.<sup>83</sup> The majority opinion in *Crawford* exhibits a broad sweeping application of proximate cause as the second element of the predicate felony was brushed over.<sup>84</sup> For the court, it was enough that Crawford used a gun to establish the proximate result of the victim's death.<sup>85</sup> Yet, if the principle of applying a statute in its entirety and the doctrine of proximate cause join together as they should, a defendant's possession and use of a gun as well as disability status should be analyzed to determine whether that conduct was so closely connected with the victim's death that it renders the offender legally responsible for the death of the victim.<sup>86</sup> Failing to consider the second element of the weapons-while-under-disability statute and finding an offender guilty of involuntary manslaughter solely because he possessed and used a gun is arguably a violation of an individual's rights under the Second Amendment.<sup>87</sup> O.R.C. 2923.13 makes it a crime for a person to use a firearm if that person has been previously convicted of a drug crime.<sup>88</sup> The circumstances of the disability, such as Crawford's conviction for attempted drug abuse,<sup>89</sup> must be considered as each element of the felony offense must be relevant to determine the cause of a victim's death and hold an offender liable for involuntary manslaughter.<sup>90</sup>

The fact that the particular circumstances do not directly relate to the death of the victim should not be enough to render the offender not guilty, but the circumstances should play a role in determining the dangerous nature of the offender possessing a weapon or the likelihood of violence based on the offender's past to evaluate its relation to the cause of the victim's death.<sup>91</sup> The commission of the predicate felony, in its entirety, should be reasonably related to the severity of committing murder.<sup>92</sup>

The question is – what consequences will emerge from this court's holding in *Crawford*? If there is no requirement to apply a statute in its entirety when evaluating the proximate result of an offender's action, what issues will emerge for future defendants, society, and the criminal law system? The involuntary manslaughter provision of Ohio law acts as a branch of its already-codified "felony-murder" rule.<sup>93</sup> Given that, all of the same

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83. Joseph Beale, *Proximate Consequences of an Act*, 33 HARV. L. REV. 633, 634-39 (1919-1920).

84. *Crawford* at ¶ 16.

85. *Id.*

86. See Goldsmith, *supra* note 59, at 582.

87. See U.S. CONST. amend. II.

88. OHIO REV. CODE ANN. § 2923.13(A)(3) (West 2022).

89. *Crawford* at ¶ 1.

90. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

91. O'Herron, *supra* note 80, at 18.

92. *Id.* at 2.

93. Goldsmith, *supra* note 59, at 570.

concerns that attach to that rule attach to this one, with the additional ramifications that this Court's holding in *Crawford* makes possible.<sup>94</sup> The following analysis will focus on the potential landscape of involuntary manslaughter in Ohio in the wake of *Crawford*, and the overarching impacts of this extension of the felony-murder rule.

*B. Crawford Alters the Landscape: What Does the Future Hold?*

As urged by Justice Donnelly in the *Crawford* dissent, the majority's opinion could be interpreted to apply well beyond the narrow focus that it resulted from, as there is no limitation provided by the court.<sup>95</sup> The court's analysis begins and ends with the plain text of the statute.<sup>96</sup> While the text of a statute is undeniably a key factor in any court's decision, the majority opinion in *Crawford* fails to go the necessary one step further and consider whether their holding could have consequences unintended by the legislature when the statute was enacted, leading to the conviction of individuals similarly situated simply because they have another unrelated felony offense, or eliminate traditional elements that have long been principles of criminal law.<sup>97</sup> By not expressly limiting the court's holding, *Crawford* becomes a catalyst for these problems to grow unfettered and impact offenders in ways likely beyond the court's and the legislature's intent.

*i. Unintended Consequences*

O.R.C. 2903.02(B) is presumably a codification of the common law felony murder rule by saying "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 and that is not a violation of section 2903.03 or 2903.04 of the Revised Code."<sup>98</sup> Examples of first and second-degree felonies include felonious assault, kidnapping, aggravated robbery, aggravated arson, and child endangerment.<sup>99</sup> The involuntary manslaughter statute is divided into two sections, with one section imposing penalties for deaths occurring as the proximate result of misdemeanors, and with the other division imposing penalties for deaths occurring as the proximate result of felonies.<sup>100</sup> Division A of the involuntary

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94. *Id.*

95. *State v. Crawford*, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶ 27 (Donnelly, J., dissenting).

96. *Id.* at ¶ 14.

97. *E.g.*, *supra* note 67, at 5.

98. OHIO REV. CODE ANN. § 2903.02(B) (West 2022).

99. Letter from Sara Andrews, Director, Ohio Criminal Sentencing Commission, to Commission Members and Advisory Committee, Ohio Criminal Sentencing Commission (Oct. 19, 2015) (on file with the Ohio Supreme Court).

100. OHIO REV. CODE ANN. §§ 2903.04(A)-(B) (West 2022).

manslaughter statute reads “No person shall cause the death of another . . . as a proximate result of the offender’s committing or attempting to commit a felony.”<sup>101</sup> This provision presents an interrelationship with the felony murder rule codified in 2903.02(B).<sup>102</sup> However, a key difference between the two provisions is that one limits the predicate felony offenses that would qualify, and one does not.<sup>103</sup> A lack of limitation for predicate felonies that would fulfill the involuntary manslaughter statute runs the risk of punishing non-violent offenders the same way a violent offender would be punished, which goes against society’s understanding of just punishment, contradicts the justifications of the felony murder doctrine and intensifies the problems with felony murder and its sister doctrines.<sup>104</sup> The court’s holding in *Crawford* further exacerbates these problems by not considering the relationship between the entire predicate felony and the death of the victim.

In *Crawford*, the predicate felony was a violation of the weapons-while-under-disability statute, a felony of the third degree.<sup>105</sup> Crawford’s conviction was affirmed because Dickens’s death could have been assumed to be a natural, logical, and proximate result of the commission of the unlawful act of having and using a firearm while under disability.<sup>106</sup> This felony is arguably violent, though the underlying circumstances of Crawford’s disability should have been used to determine this fact, but what happens when the felony is not violent by any possible interpretation? The majority opinion in *Crawford* does not limit its application to other scenarios.<sup>107</sup>

Consider a situation where the driver of an automobile is involved in an accident with another vehicle, and the driver of the other vehicle dies as a result of the accident. While investigating the accident, it is discovered that the driver of the automobile tampered with the airbags in his vehicles by replacing them with counterfeit ones and selling them to others, a violation of O.R.C. 4549.20 and a felony of the fifth degree.<sup>108</sup> Technically, the driver of the automobile was committing a felony, and the driver of the other vehicle died. Is that enough to charge him with involuntary manslaughter? To some, it might seem to be an absurd example, but when analyzing the *Crawford* opinion in its entirety, it is possible that he could be convicted of involuntary manslaughter. The majority states that it is of no consequence whether the circumstances behind Crawford’s felony are related to the cause of the

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101. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

102. OHIO REV. CODE ANN. § 2903.02(B) (West 2022).

103. See generally OHIO REV. CODE ANN. §§ 2903.04, 2903.04(A) (West 2022).

104. O’Herron, *supra* note 80, at 11.

105. State v. Crawford, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶ 2.

106. *Id.* at ¶ 4.

107. *Id.* at ¶ 27 (Donnelly, J., dissenting).

108. OHIO REV. CODE ANN. § 4549.20 (West 2022).

victim's death.<sup>109</sup> "The foreseeable harm is what matters."<sup>110</sup> Without considering the totality of the circumstances, nothing is preventing the construal of the Court's holding to expand an offender's punishment well beyond accepted theories of punishment.<sup>111</sup> The driver of this automobile might have been able to foresee that someone would be harmed by his counterfeit airbags, but could he foresee this particular victim? Is it enough under *Crawford*, if it is not required that every part of the statute be relevant to the cause of the victim's death? It is unclear.

*Crawford* opens the door to disproportionality between the felony committed and the punishment ultimately imposed.<sup>112</sup> By failing to limit the felonies that could qualify as a predicate offense, two felons now can suffer the same punishment for two entirely different felonies, such as an offender who caused death during a kidnapping and a felon who caused death during a non-violent or status-offense felony.<sup>113</sup> This court has taken note of this risk before and refrained from applying the involuntary manslaughter statute in its full force where the severity of an offender's punishment would be too harsh and illogical because the result was unintended.<sup>114</sup> In *State v. Collins*, an offender was facing the charge of involuntary manslaughter for a death that occurred because the defendant failed to stop at a clearly marked stopped sign, a minor misdemeanor.<sup>115</sup> The court ruled that a minor misdemeanor could not serve as the predicate offense for involuntary manslaughter.<sup>116</sup> In reaching its decision, the court paid special attention to the fact that the Ohio General Assembly had separate degrees of misdemeanors with separate penalties and assumed that this meant that the Assembly must have considered some offenses to be more serious and deserved a harsher punishment.<sup>117</sup> While admittedly the *Collins* opinion has been overruled by statute to include all misdemeanors with a few exceptions, the logic as it pertains to felony offenses still stands.<sup>118</sup>

Ohio has five different levels of felonies, all with their own degrees of punishments that reflect the same concept that some felonies are more severe than others and deserve harsher punishment.<sup>119</sup> Inflicting manslaughter punishment on an offender who had no intention of killing another simply

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109. *Crawford* at ¶ 16.

110. *Id.*

111. Goldsmith, *supra* note 59, at 582.

112. O'Herron, *supra* note 80, at 13.

113. *Id.*

114. *See generally* *State v. Collins*, 67 Ohio St.3d 115, 616 N.E.2d 224 (1993).

115. *Id.* at 115-16, 616 N.E.2d at 225.

116. *Id.* at 115-16, 616 N.E.2d at 224-25.

117. *Id.* at 116, 616 N.E.2d at 225.

118. *See generally id.*

119. OHIO REV. CODE ANN. §2929.14 (West 2022).

because he was committing a separate felony, regardless of its nature, makes little sense unless one can find a logical reason for punishing one felon more severely than the thousands of others whose conduct, while possibly worse, happily did not result in the death of another.<sup>120</sup> It is by no means too harsh to make an offender's punishment somewhat conditional on the actual result, but the nature of the felony, the intent of the result, and the consciousness of risk should be considered as well.<sup>121</sup> The *Crawford* analysis allows for a result that is misplaced in the American criminal justice system as a society that intends to punish according to fault and evaluate the seriousness of crimes.<sup>122</sup> Arguably, the predicate felony offense in *Crawford* was dangerous to human life, which makes the resulting imposition of involuntary manslaughter more proportional.<sup>123</sup> However, nothing in *Crawford* prevents its holding from applying to other, lesser felonies that have no danger to human life but are unfortunately coupled with accidental death.

*ii. Eliminating Longstanding Principles of Criminal Law*

The court's holding in *Crawford* has diluted foundational elements of criminal law and culpability such as the intent requirement and causation. The decision also impacts the justifications of deterrence and just punishment for deaths that would otherwise be impossible to sanction.

Intent transfers in a felony-murder case, as it does in Ohio's felony-manslaughter rule.<sup>124</sup> This doctrine of transferred intent is often criticized by scholars and judges alike because it eliminates the intent to kill another and replaces it with the intent to commit the underlying felony.<sup>125</sup> Perhaps there is a valid argument that the doctrine of transferred intent is not so out of place when the predicate felony is arson, and a person dies. Obviously, there is some intent to harm in that instance, so the transfer of intent certainly seems less problematic.<sup>126</sup> But, considering the situation in *Crawford*, knowingly obtaining and using a firearm while under disability most certainly includes poor judgment and other issues, but that does not mean it necessarily includes any intent whatsoever to cause harm to another. The court did not fully consider the potential of its decision and the legal ramifications that its holding could have by not considering the complete statute that *Crawford* violated. No analysis was conducted as to the nature of *Crawford*'s disability, so there was no way of knowing whether *Crawford*'s intent was evil or

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120. *Collins*, 67 Ohio St.3d 117, 616 N.E.2d at 225-26.

121. *Id.* at 117, 616 N.E.2d at 226.

122. O'Herron, *supra* note 80, at 13.

123. *Id.* at 13-14.

124. *Id.* at 14.

125. *Id.*

126. *Id.*

malicious in obtaining the firearm and firing it into the air.<sup>127</sup> *Crawford* poses a serious risk in assuming that all felonies are equally suited to serve as the predicate felony offense for involuntary manslaughter because there is now no requirement to consider all of the underlying circumstances of the predicate offense before assuming there was intent to commit it and applying it to involuntary manslaughter.<sup>128</sup>

Regrettably, as pointed out by both the majority and the dissent in *Crawford*, Crawford did not preserve crucial issues of causation that could have reversed the outcome of the case.<sup>129</sup> According to the jury's verdicts, Crawford's act of firing his weapon did not cause the death of Dickens," but, somehow, the act of having the gun while under disability did."<sup>130</sup> The majority correctly recognizes the limitations bestowed upon the case by Crawford as it pertains to causation, but still the future implications this ruling has on the doctrine of causation transcends traditional bounds.<sup>131</sup> This holding draws a broad line of causation to compensate for the injury of the victim by failing to consider each and every part of the underlying felony.<sup>132</sup> Was the death the proximate result of Crawford having a weapon and firing it into the air or was the death the proximate result of Crawford being under disability?<sup>133</sup> For just imprisonment, both factors should play a role in determining proximate causation, but they did not in this case.<sup>134</sup> The jury did not specify in what manner Crawford violated the statute, whether it was by having the weapon or by using the weapon.<sup>135</sup> If the verdict stated Crawford's act of firing the gun did not kill Dickens in addition to the verdict not specifying how Crawford violated the weapons-while-under-disability statute, it can be assumed that Crawford's possession of the gun was enough to satisfy the predicate felony offense.<sup>136</sup> If that is the case, the Court's holding debatably extends the liability for deaths that are the acts of parties over which the defendant has no control, making the original offender liable for all results of the initial criminal act, simply because the offender set the chain in motion and regardless of who or what intervened.<sup>137</sup> *Crawford's* holding is broad and undefined and can be applied in situations where the original offender had no hand in the actual death but was the one who set the

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127. State v. Crawford, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶¶ 14, 16.

128. *Id.*

129. *Id.* at ¶¶ 17, 19.

130. *Id.* at ¶ 23.

131. *Id.* at ¶ 17.

132. Goldsmith, *supra* note 59, at 589.

133. *Id.* at 581.

134. *Id.* at 582.

135. *Crawford* at ¶ 12.

136. *Id.*

137. Goldsmith, *supra* note 59, at 582.

chain of events in motion simply because they committed some type of felony, even if it was nonviolent and could not have resulted in death on its own.<sup>138</sup> The application of *Crawford* needs express curtailment, so the benefits of the involuntary-manslaughter provision are not outweighed by the pitfalls.

As an extension of the felony-murder doctrine, it can be presumed that the involuntary-manslaughter provision also serves the purpose of deterrence.<sup>139</sup> The doctrine of deterrence theorizes that the felony-murder rule and its deviations deter felons from committing felonies and from causing death during that felony.<sup>140</sup> While this theory does hold some merit, it unravels when courts and the legislature fail to limit the predicate felonies that serve as the foundation for involuntary manslaughter.<sup>141</sup> It has been long understood that the principle of deterrence was meant to deter offenders from committing felonies that were inherently dangerous to human life.<sup>142</sup> Expanding involuntary manslaughter to any felony, especially non-violent ones, weakens the deterrence theory because knowledge of the foreseeability of death must be present.<sup>143</sup> If the felon's actions are not ones with foreseeable harmful results, then he is not deterred from committing it unless notified that the law labels certain felonies as dangerous.<sup>144</sup> Failing to limit predicate felonies to ones that are inherently dangerous or a threat to human life renders the doctrine of deterrence so broad that a felon is not likely to be deterred.<sup>145</sup> The Court in *Crawford* does not consider the legislature's likely purpose of deterrence, and instead applies the rule broadly.<sup>146</sup> As a result, nothing deters any offender from committing any felonious activities because the Court explicitly did not evaluate whether the circumstances of the underlying felony were dangerous or a threat to human life.<sup>147</sup> Killings that accompany non-violent felonies or ones that do not pose an inherent threat to human life could not possibly merit the same punishment as those that are dangerous and violent.<sup>148</sup> But yet, *Crawford* opens that door by discrediting the evaluation of all of the underlying circumstances of the predicate felony and limiting the evaluation to whether a violation occurred and whether it

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138. O'Herron, *supra* note 80, at 12.

139. Cole, *supra* note 65, at 51.

140. *Id.* at 21.

141. O'Herron, *supra* note 80, at 12.

142. *Id.*

143. Cole, *supra* note 65, at 34.

144. O'Herron, *supra* note 80, at 12.

145. *Id.*

146. Cole, *supra* note 65, at 51; State v. Crawford, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840, at ¶ 14.

147. O'Herron, *supra* note 80, at 12; *Crawford* at ¶¶ 14, 16.

148. Goldsmith, *supra* note 59, at 576.



could have been the proximate cause of the victim's death.<sup>149</sup> The Court's dismissal of the relativity of the underlying circumstances of each part of the felony offense was misplaced, and an evaluation of dangerousness at the minimum or limitation of what predicate felonies fulfill the statutory requirement at the maximum would avoid the nullification of the principles of just punishment and deterrence.<sup>150</sup> There must be a causal connection between the predicate felony, in its full effect, and the death of another.<sup>151</sup>

## V. CONCLUSION

The language of Ohio's involuntary manslaughter statute is straightforward; however, the details of its components are multifaceted and carry with them the potential to contradict societal principles of justice and culpability if not carefully evaluated.<sup>152</sup> An inquiry into each circumstance underlying the felony being used as the foundation for an involuntary manslaughter charge is crucial.<sup>153</sup> The inconsistency with precedent, the unintended consequences, and the elimination of foundational principles of criminal law can all be avoided by requiring there to be a causal relationship between the death of the victim and the reasons and actions underlying the predicate felony offense.<sup>154</sup> In *Crawford*, the issue was whether having a weapon while under disability could serve as the predicate offense to involuntary manslaughter when all parts of the violation do not have a causal relationship to the cause of death of the victim.<sup>155</sup> The court held that it could because there was no requirement in the text of the statute that the reason for the disability be causally related to the death of the victim.<sup>156</sup> This ruling is a deviation from prior case law and interpretations of predicate offenses, and further clarification on this issue is needed to prevent misapplication of the court's holding and to prevent any altering consequences.

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149. *Crawford* at ¶ 16.

150. O'Herron, *supra* note 80, at 13.

151. Cole, *supra* note 65, at 50.

152. OHIO REV. CODE ANN. § 2903.04(A) (West 2022).

153. Cole, *supra* note 65, at 50.

154. O'Herron, *supra* note 80, at 21-22.

155. *State v. Crawford*, 169 Ohio St.3d 25, 2022-Ohio-1509, 201 N.E.3d 840 at ¶ 13.

156. *Id.* at ¶ 14.