

CHAPTER 11: HOMICIDE

The various types of homicide in Ohio were discussed in Chapter 5 regarding mens rea and intent. But it is necessary to discuss them more fully here. The types of homicides under Ohio law are analogous to the types of homicides discussed in the text, although they are sometimes given slightly different labels. One type 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” described 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, available at <http://codes.ohio.gov/orc/2903.01>).

As noted, homicide includes 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 a 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 arose from a riot that took place at Ohio’s Lucasville Prison, after 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). and the following passage is 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 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 Lblock. 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 two inmates and a corrections officer, as well as three counts of kidnapping. - He was sentenced to death. When charged and convicted, evidence of four of the aggravating circumstances listed in Ohio's statute were found: 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. In addition, the state showed that because Skatzes and the other inmates told authorities that they planned to kill a corrections officer if their demands were not met, Skatez purposefully killed another with "prior calculation and design." For that reason, the Ohio Supreme Court affirmed Skatzes conviction for aggravated murder. His conviction for all but one of the kidnapping charges was also affirmed. Nonetheless, Skatez has filed a number of other petitions seeking post-conviction relief. To date, none have been resolved in his favor.

Murder

. The crime of "Murder" in Ohio is analogous to "second-degree" murder described in the text. The Ohio Revised Code provides that:

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, available at <http://codes.ohio.gov/orc/2903.02>).

Like aggravated murder, the crime of murder is the purposeful killing of another, but unlike aggravated murder it does not include "prior calculation and design." 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), 2007, available at <http://codes.ohio.gov/orc/2929.02>).

Voluntary Manslaughter and Involuntary Manslaughter

Voluntary manslaughter is typically described as a "heat of passion" homicide. The statute governing that

crime provides that:

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, available at <http://codes.ohio.gov/orc/2903.03>).

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

According to the text, in many jurisdictions, involuntary manslaughter involves negligence on the part of the offender. Under Ohio law, however, the negligence level of culpability is not used. Instead, a person is guilty of involuntary manslaughter if he or she violates the following provision:

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, available at <http://codes.ohio.gov/orc/2903.04>).

Involuntary manslaughter can also result if someone causes 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 a commit 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). This because Ohio's aggravated vehicular homicide statute covers murders caused as a result of DWI.

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. Homicides caused by DWI, homicides caused by reckless operation, and homicides caused by negligence are subject to separate provisions. As a result, if an individual is speeding and this results in a homicide, that individual can be charged with one count of aggravated vehicular homicide on the basis of the "reckless operation" provision. Additionally, if this individual was also DWI, he can be charged with a second count of aggravated vehicular homicide based on the DWI provision. (see <http://codes.ohio.gov/orc/2903.06>) Aggravated vehicular homicide involving DWI is 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 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 as a first-degree misdemeanor, increasing to a fourth-degree felony if driving suspension is present (Ohio Revised Code, §2903.06, 2007, available at <http://codes.ohio.gov/orc/2903.06>).

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, available at <http://codes.ohio.gov/orc/2903.041>). 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, available at <http://codes.ohio.gov/orc/2903.05>).

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, available at <http://codes.ohio.gov/orc/2903.09>).

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 argued that his conviction was unconstitutional because it criminalized the termination of a pregnancy before the fetus was viable. The defendant relied on U.S. Supreme Court cases *Roe v. Wade* and *Planned Parenthood v. Casey*, claiming that they prohibited 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* recognized that the fundamental right to privacy encompasses a 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 under Ohio statutory scheme the unborn is protected from unlawful termination by a third party from fertilization onward.

REFERENCES

Ohio Revised Code, <http://codes.ohio.gov/orc>

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 voluntary manslaughter under Ohio law?
 - a. murder is “recklessly” taking a life, while voluntary manslaughter is doing so “negligently”
 - b. murder is a felony, whereas voluntary manslaughter is only a misdemeanor
 - c. murder is purposefully killing another while manslaughter is knowingly killing another during a fit of passion
 - d. murder is punishable by the death penalty; voluntary manslaughter is punishable by life imprisonment

3. Which of the following is true regarding aggravated vehicular homicide in Ohio?
 - a. it is always a second degree felony
 - b. it only applies when individuals are driving while intoxicated
 - c. a defendant who is reckless can be convicted of two counts of vehicular homicide if he was DWI
 - d. it only applies when an offender is driving with a suspended license

4. What is the primary difference between aggravated murder and murder under Ohio law?
 - a. aggravated murder is purposely taking a life while murder is knowingly doing so
 - b. aggravated murder involves prior calculation and design while murder does not
 - c. the death penalty must be imposed for aggravated murder while life in prison must be imposed for murder
 - d. aggravated murder is always a felony while murder can sometimes be a misdemeanor

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. Is this good or bad? 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*

- <http://statepatrol.ohio.gov/> - website of the Ohio State Patrol provides information about driving while intoxicated