

Criminal Liability Of Parent For Omission Causing Death Of Child - Palmer v. State Craig v. State

Harriette Cohen

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>

 Part of the [Criminal Law Commons](#)

Recommended Citation

Harriette Cohen, *Criminal Liability Of Parent For Omission Causing Death Of Child - Palmer v. State Craig v. State*, 21 Md. L. Rev. 262 (1961)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol21/iss3/9>

This Casenotes and Comments is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

**Criminal Liability Of Parent For Omission
Causing Death Of Child**

*Palmer v. State*¹

*Craig v. State*²

In *Palmer v. State*, the defendant's child suffered prolonged and brutal beatings at the hands of the defendant's paramour. Although the defendant was well-aware of her paramour's sadistic conduct and had received many remonstrances from her neighbors, who were concerned about the child's welfare, she did nothing to prevent the beatings which ultimately proved fatal. In *Craig v. State*, the defendant parents, because of their religious beliefs, refused to call in medical aid when their child became ill with pneumonia which subsequently caused the child's death. In both cases the Court of Appeals found the parents grossly negligent, but reached different results, since the gross negligence must be the proximate cause of death to

¹ 223 Md. 341, 164 A. 2d 467 (1960).

² 220 Md. 590, 155 A. 2d 684 (1959).

sustain a conviction for involuntary manslaughter. In the *Palmer* case, the manslaughter conviction was affirmed because the defendant's negligence was found to be a proximate cause of death. In the *Craig* case, the manslaughter conviction was reversed for lack of sufficient proof of a causal connection since the evidence was insufficient to show that by the time the need for a doctor should have become apparent, the child could have been saved.

As illustrated by the subject cases, the problem of criminal liability for a parent's failure to render aid to a child in peril is likely to involve one or more of the following subsidiary topics, which will be discussed in the order they appear here: (a) the general nature of a parent's duty to care for his children and the criminal sanctions imposed for an omission to perform that duty; (b) the degree of negligence sufficient for manslaughter, especially as affected by the parent's motives for failing to act; and (c) the circumstances under which an omission will be deemed to be a proximate cause of death in such cases.

It is almost universally recognized that where a defendant owed the deceased a legal duty and the duty was imposed in part to protect life, any omission of that duty which constitutes gross or criminal negligence and results in the death of the deceased, renders the defendant chargeable with manslaughter,³ an intent to kill not being necessary to the offense.⁴ In both the *Craig* and the *Palmer* cases, this legal duty is expressed by Article 72A, Section 1 of the Code,^{5a} wherein it is explicitly provided that "the father and mother are jointly and severally charged with the support, care, nurture, welfare and education of their minor children."

The *Craig* case interpreted "medical care" as being embraced within the scope of this language. This has long been the statute and common law of England,⁵ and of this country.⁶ Some states, like Maryland, have statutes which

³ *U. S. v. Knowles*, F. Cas. No. 15,540, 4 Sawy. 517 (D.C. N.D. Calif. 1864); *People v. Beardsley*, 150 Mich. 206, 113 N.W. 1128 (1907).

⁴ *United States v. Holmes*, 104 F. 884 (C.C. N.D. Ohio 1900); *Westrup v. Commonwealth*, 123 Ky. 96, 93 S.W. 646 (1906); *Commonwealth v. Thompson*, 6 Mass. 134, 3 Wheeler Cr. Cas. 312 (1809); *State v. O'Brien*, 32 N.J.L. 169 (1867).

^{5a} 6 MD. CODE (1957) Art. 72A, § 1.

⁵ *Regina v. Wagstaffe*, 10 Cox C.C. 530 (Eng. 1868); *Regina v. Hines*, 80 Cent. Cr. 309 (Eng. 1874); *Regina v. Senior*, 19 Cox C.C. 219 (Eng. 1898); 31 and 32 Vict., C. 132, § 37 (1868); *Regina v. Smith*, 8 Cur. & P. 153 (1837).

⁶ *State v. Chenowith*, 163 Ind. 94, 71 N.E. 197 (1904); *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903).

merely impose a legal duty without specifying criminal liability,⁷ but many states have enacted statutes expressly imposing criminal liability where a parent or guardian neglects or refuses to provide necessaries for his children.⁸ These statutes vary in their wording from those requiring generally the furnishing of "maintenance and support,"⁹ to more specific ones requiring explicitly that proper medical care be provided the child.¹⁰

The question involved in the *Palmer* case is whether or not a parent is under a legal duty to go to the aid of his helpless child who is being violently attacked by another. This question seems to be one of first impression in this country.¹¹ In *Rex v. Russell*,¹² an Australian case decided in 1933, a father who stood by and watched while the mother drowned their two children was convicted of manslaughter. The Maryland Court seemed to have no difficulty in the *Palmer* case in finding this duty implicit in Section 1 of Article 72A.

When the legal duty has been established, it is next necessary to consider if the parent's negligent failure to perform this duty was sufficient to make him criminally liable. The defendants in both the *Craig* and the *Palmer* cases were charged with involuntary manslaughter. To convict of manslaughter based on negligence, it is necessary to prove that the death was caused, not by ordinary

⁷ 6 MD. CODE (1957) Art. 72A, § 1. See also, 2 MD. CODE (1957) Art. 26, § 51, which gives the circuit court for each county jurisdiction in "juvenile causes." § 52, of that article defines "neglected child" as a child "(4) whose parent, guardian or custodian neglects, refuses, when able to do so, to provide necessary medical, surgical, institutional or hospital care for such child . . ." Under Art. 26, § 53, the judge of the Juvenile Court is given "original, exclusive jurisdiction" both over a child who is "dependent, delinquent, neglected or feeble-minded" and over the parent who causes or contributes to the child's being brought within the jurisdiction of the court. And finally, § 55, of the same Article, provides for imposition of criminal sanctions upon persons found guilty of violation of § 52.

⁸ 4 VERNIER, AMERICAN FAMILY LAWS (1936) § 234, p. 57. *State v. Moran*, 99 Conn. 115, 121 A. 277 (1923); *People v. Booth*, 390 Ill. 330, 61 N.E. 2d 370 (1945); *State v. Waller*, 90 Kan. 829, 136 P. 215 (1913); *Owens v. State*, 6 Okla. Cr. 110, 116 P. 345 (1911); *State v. Langford*, 90 Or. 251, 176 P. 197 (1918); *Wallace v. Cox*, 136 Tenn. 69, 188 S.W. 611 (1916).

⁹ *People v. Booth*, 390 Ill. 330, 61 N.E. 2d 370 (1945); *State v. Waller*, 90 Kan. 829, 136 P. 215 (1913); *Owens v. State*, 6 Okla. Cr. 110, 116 P. 345 (1911); *State v. Langford*, 90 Or. 251, 176 P. 197 (1918).

¹⁰ *State v. Moran*, 99 Conn. 115, 121 A. 277 (1923); *Wallace v. Cox*, 136 Tenn. 69, 188 S.W. 611 (1916).

¹¹ Note, *Criminal Law — Negative Acts — Duty of Parent to Protect Child*, 1 Vand. L. Rev. 457, 459 (1948). Cf., *Moffett v. State*, 151 Tex. Cr. App. 320, 207 S.W. 2d 384 (1948) where the court failed to sustain the conviction of the parent as a "principal" under the same factual situation as the *Palmer* case, but under a statutory scheme which obscures its relationship to the instant case.

¹² 1933 Vict. L. Re. 59 (1933).

negligence, but by negligent conduct falling so far below the standard of social acceptability as to be characterized as "criminal," "culpable," or "gross" negligence.¹³ In Maryland, to sustain a charge of involuntary manslaughter it is necessary to show that the failure to perform the legal duty constituted "gross and wanton negligence,"¹⁴ which has been interpreted in Maryland to mean "a wanton or reckless disregard for human life."¹⁵ In determining whether or not the defendant acted recklessly, the reasonable man test should be applied. The reasonable man is generally required to have the common knowledge of the majority of his fellow men and to act accordingly.¹⁶ If the reasonable man would be aware that the child would die or suffer great bodily injury unless it is removed from a source of physical danger or receives medical aid, then the accused is reckless in failing to remove the child or in denying that medical aid, and should be found guilty of culpable negligence, unless there is some legally acceptable excuse for his failure to act.

However, the parent's motive for failing to perform his duty does have some bearing on the degree of his criminal liability. Where the legal duty to provide medical care exists and the defendant deliberately withholds sustenance from a baby with an intent to inflict death or grievous bodily harm,¹⁷ or through a desire to save effort or money,¹⁸ and the child's death results, it may be deemed murder. Where the defendant is guilty of neglect only, but the neglect is culpable, he is guilty of manslaughter.¹⁹ The fact that the medical aid necessary to save the child's life is

¹³ PERKINS, CRIMINAL LAW (1957) Ch. 2, § 1, p. 61.

¹⁴ Neusbaum v. State, 156 Md. 149, 162, 143 A. 872 (1928).

¹⁵ Clay v. State, 211 Md. 577, 128 A. 2d 634 (1957); Thomas v. State, 206 Md. 49, 109 A. 2d 909 (1954); Hughes v. State, 198 Md. 424, 84 A. 2d 419 (1951).

¹⁶ Commonwealth v. Pierce, 138 Mass. 165, 52 Am. Rep. 264 (1884); Regina v. Machekequonabe, 28 Ont. Rep. 309 (1897). There are some authorities who hold an opposing view and maintain that the reasonable man must actually possess the knowledge in question before he can be convicted on the grounds that he acted unreasonably. See HALL, GENERAL PRINCIPLES OF CRIMINAL LAW (1960) Ch. 5.

¹⁷ State v. Chenowith, 163 Ind. 94, 71 N.E. 197 (1904); Commonwealth v. Hall, 322 Mass. 523, 78 N.E. 2d 644 (1948); State v. Watson, 77 N.J.L. 299, 71 A. 1113 (1909); State v. Barnes, 141 Tenn. 474, 212 S.W. 100 (1919); Regina v. Conde, 10 Cox C.C. 547 (Eng. 1867); Regina v. Ryland, 10 Cox C.C. 569, 37 L.J. Mag. Cas. N.S. 10, 17 L.T.N.S. 219, 16 Week. Rep. 280 (1867); Regina v. Chandler, 3 C.L.R. 680, 24 L.J. Mag. Cas. N.S. 109, 1 Jur. N.S. 429, 3 Week. Rep. 404, 6 Cox C.C. 519 (1855); Regina v. Mablet, 5 Cox C.C. 339 (Eng. 1851); Regina v. Bubb, 4 Cox C.C. 455 (Eng. 1850); Rex v. Saunders, 17 Car. & P. 277 (Eng. 1835).

¹⁸ Commonwealth v. Hall, 322 Mass. 523, 78 N.E. 2d 644 (1948).

¹⁹ State v. Barnes, 141 Tenn. 469, 212 S.W. 100 (1919).

denied because of the defendant's conscientious religious convictions does not excuse or justify the denial,²⁰ such motivation is generally considered not to prevent a finding of culpable negligence.²¹ But where the defendant tries to act reasonably and is only guilty of a slight degree of negligence, as when he does not recognize the danger until too late, and then calls in medical aid, there is probably no criminal liability.²²

Both the *Craig* and the *Palmer* cases emphasize that there can be no conviction of involuntary manslaughter unless it is shown that the defendant's gross and criminal negligence was the proximate cause of death,²³ i.e., there must be a substantial causal connection between his negligence and the death that ensued.²⁴ To prove that non-feasance is a cause of death is a difficult task because inaction is seldom thought of as the cause of something. In this type of case there are generally two factors contributing to the death. One is the disease or beating which is an "active" and obvious cause; the other is the inaction of the parent which is "passive" and its precise effect is

²⁰ The defendants in the *Craig* case contended that 6 Md. CODE (1957) Art. 72A, § 1, could not be applicable to them, and was unconstitutional on the grounds that it would deprive them of the free exercise of their religion guaranteed by the First and Fourteenth Amendments to the Federal Constitution. Holding this defense to be untenable, the Court of Appeals referred to *Reynolds v. United States*, 98 U.S. 145 (1878), and said, "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and convictions they may with practices." 220 Md. 590, 600, 155 A. 2d 684 (1959). While a person is free to believe as he chooses, he cannot, under the guise of religious conviction, act contrary to the laws regulating the health and safety of society. The text writers and cases are practically unanimous on this point. See *Hopkins v. State*, 193 Md. 489, 496, 69 A. 2d 456 (1949); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Reynolds v. United States*, 98 U.S. 145 (1878); *Davis v. Beason*, 133 U.S. 333 (1889); *Morrison v. State*, 252 S.W. 2d 97 (Mo. 1952); *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903); *Regina v. Senior*, 12 B. 283 (1899); 12 A.L.R. 2d 1047, 1050; 25 Am. Jur., Homicide, § 108. In *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E. 2d 769 (1952), which involved this same question, the Illinois court held under a statute similar to the Maryland statute that it was not a denial of religious freedom to compel parents to provide medical treatment for their child when necessary. Belief, no matter how sincere, that a statute is unconstitutional, is no defense in a prosecution for its violation. See *Reynolds v. United States*, 98 U.S. 145 (1878); *Hunter v. State*, 158 Tenn. 63, 12 S.W. 2d 361 (1928); *State v. Wadhams Oil Co.*, 149 Wis. 58, 134 N.W. 1121 (1912); 61 A.L.R. 1148; 1 WHARTON, CRIMINAL LAW (12th ed. 1932) § 415, p. 614.

²¹ *State v. Chenowith*, 163 Ind. 94, 71 N.E. 197 (1904); *Commonwealth v. Hall*, 322 Mass. 523, 78 N.E. 2d 644 (1948); *State v. Barnes*, 141 Tenn. 469, 212 S.W. 100 (1919).

²² *State v. Watson*, 77 N.J.L. 299, 71 A. 1113 (1909).

²³ *State v. Campbell*, 82 Conn. 671, 74 A. 927 (1910); *Regina v. Morby*, L.R. 8 Q.B. Div. Eng. 571, 15 Cox C.C. 35, 30 Week. Rep. 613, 46 L.T.N.S. 288 (1882); PERKINS, CRIMINAL LAW (1957) 525.

²⁴ *Duren v. State*, 203 Md. 584, 102 A. 2d 277 (1954).

difficult to see or estimate. Nevertheless, the problems of causation are generally the same whether the death is caused by positive action or by negative action.²⁵ It is not necessary to show that the defendant's act was the sole cause of harm; it need only be a contributing cause in order to hold him liable.²⁶ But it is necessary to prove that this contributory cause is a *sine qua non*, i.e., but for this cause the death would not have occurred in the manner that it did, and further, that it was a substantial factor in bringing about this particular result.²⁷ "If the death would not have happened except for this non-performance the causal relation is clear; if it would have happened just as it did even had the duty been properly performed, the failure so to perform did not cause the loss of life."²⁸ It was on this last mentioned point that *Craig* and *Palmer* results differed.

In the *Palmer* case, the court quoted from WHARTON:²⁹

"It is not essential to the existence of a causal relationship that the ultimate harm which has resulted, was foreseen or intended by the actor. It is sufficient that the ultimate harm is one which a reasonable man would foresee as being reasonably related to the acts of the defendant * * * To constitute the cause of the harm, it is not necessary that the defendant's act be the sole reason for the realization of the harm which has been sustained by the victim. The defendant does not cease to be responsible for his otherwise criminal conduct because there were other conditions which contributed to the same result."³⁰

The Court found that the beatings were not the sole legal cause, and that the defendant's failure to remove her child from danger was a contributing cause of death, without really emphasizing the factor that the defendant's omission must also be a *sine qua non* cause. However, it is probable that if the defendant had intervened to protect the child, the death would not have occurred. On the other hand, the court in the *Craig* case laid great stress on the fact that although the defendants clearly failed to

²⁵ PERKINS, CRIMINAL LAW (1957) 600.

²⁶ *Id.*, 609.

²⁷ In other words, "no matter how clearly a legal duty to care for a child may have been violated, the forbearance or omission is not a cause of the child's death unless it had the effect of shortening the child's life." PERKINS, *loc cit. supra*, n. 25.

²⁸ PERKINS, *loc. cit. supra*, n. 25.

²⁹ 1 ANDERSON, WHARTON'S CRIMINAL LAW AND PROCEDURE (1957) § 68, p. 147.

³⁰ *Palmer v. State*, 223 Md. 341, 351, 164 A. 2d 467 (1960).

perform their legal duty, they were not criminally negligent in such failure until the last few days of the child's illness when it became obvious that the illness was serious. There was insufficient evidence to show that even if they had called in medical aid at that time, the child's life could have been saved. Therefore, it could not be proved that the death would not have occurred substantially as it did had the legal duty been properly performed, and thus the defendants' inaction was not the proximate cause of death.

As the instant cases indicate, a parent has a definite legal duty to care for his minor child imposed by Article 72A,³¹ and where such parent's gross negligence in failing to perform this duty is shown to be the proximate cause of his child's death, he may be guilty of involuntary manslaughter; also, the "religious beliefs" of the parent will not be a defense, although some courts have indicated that the parent's motive for neglecting his child will have some bearing on the degree of criminal liability imposed.³²

HARRIETTE COHEN

³¹ 6 MD. CODE (1957) Art. 72A, § 1.

³² *Supra*, n. 20.