

In the  
**Supreme Court of Ohio**

STATE OF OHIO,	:	Case No. 2020-0797
	:	
Appellee,	:	On appeal from the Cuyahoga County
	:	Court of Appeals,
v.	:	Eighth Appellate District
	:	
JEREMY CRAWFORD,	:	Court of Appeals
	:	Case No. 108431
Appellant.	:	

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**BRIEF OF AMICUS CURIAE OHIO ATTORNEY GENERAL DAVE YOST  
IN SUPPORT OF APPELLEE STATE OF OHIO**

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## INTRODUCTION

Jeremy Crawford is a convicted felon, barred by Ohio's "Felon-in-Possession Statute," R.C. 2923.13(A)(3), from using or possessing a gun. Nonetheless, Crawford took a gun with him when he attended a house party in Cleveland. At the party, Crawford started a fight. And at some point during the melee, Crawford brandished his gun and fired it into the air several times. A man sitting in a nearby car was shot (there is a debate about who fired the fatal bullet) and later died of his wounds.

In Ohio, anyone who commits a felony that proximately causes the death of another is guilty of involuntary manslaughter. R.C. 2903.04(A). Anyone who violates the Felon-in-Possession Statute commits a felony. R.C. 2923.13(A)(3). The State thus charged Crawford with (among other things) illegally possessing a weapon in violation of the Felon-in-Possession Statute and involuntary manslaughter. It argued that Crawford violated the Felon-in-Possession Statute by having and firing a gun he was not permitted to possess or use, and it further argued that, because this violation proximately caused another's death, Crawford committed involuntary manslaughter. A jury convicted Crawford on both counts. The Eighth District affirmed, rejecting Crawford's argument that there was insufficient evidence to support the jury's verdict.

It is clear from Crawford's briefing that he disagrees with the Eighth District's decision affirming his involuntary-manslaughter conviction. It is unclear, however, what precisely he thinks the Eighth District got wrong. Crawford suggests, for exam-

ple, that his conviction violated his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution and under Article I, Sections 10 and 16 of the Ohio Constitution. Crawford Br.3. But Crawford makes no substantive arguments based on any of those constitutional provisions—he simply asserts his rights were violated. Crawford additionally argues that a violation of the Felon-in-Possession Statute can be a predicate felony for involuntary manslaughter *only if* the felony that subjects the defendant to the Felon-in-Possession Statute is the same felony that proximately causes the victim’s death. The argument is baseless. R.C. 2903.04(A) defines involuntary manslaughter to include “caus[ing] the death of another ... as a proximate result of the offender’s committing or attempting to commit *a felony*.” (emphasis added). The statute does not create special rules for cases in which the predicate “felony” is a violation of the Felon-in-Possession Statute. Rather, it says that *any* felony can serve as a predicate felony if another’s death is the “proximate result” of the felony’s commission. Perhaps because the argument is meritless, Crawford did not raise it in the Eighth District. Instead, he argued that his actions on the night of the party did not “proximate[ly] result” in the party guest’s death. Crawford App.Ct.Br.6–10.

Crawford has abandoned the proximate cause argument that he made below, however, and the argument he now makes fails. The Court should therefore affirm the Eighth District’s decision. The plain language of R.C. 2903.04(A) makes clear that the

possession or use of a gun in violation of the Felon-in-Possession Statute can provide the necessary predicate for an involuntary-manslaughter conviction.

### **STATEMENT OF AMICUS INTEREST**

The Attorney General is Ohio's chief law enforcement officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. He is interested in the proper interpretation and application of Ohio's criminal laws and in protecting Ohioans from violent crime.

### **STATEMENT OF THE FACTS AND CASE**

1. Jeremy Crawford is a convicted felon. *See* Indictment, R.1; Trial Tr.549. Because his past crimes include drug-related felonies, he is subject to R.C. 2923.13(A)(3)—the "Felon-in-Possession Statute"—which says that felons like Crawford may not "acquire, have, carry, or use" a firearm. R.C. 2923.13(A). Crawford was already subject to the Felon-in-Possession Statute when he attended a house party in Cleveland. Indictment, R.1; Trial Tr. 221, 549. Nonetheless, he brought a gun with him. Trial Tr.531. At some point during the party, Crawford got into an argument with Larissa Yanetta, one of the guests at the party, and threatened to slap her. Trial Tr.222. The argument quickly escalated. Gary Dickens, who was Larissa Yanetta's cousin, and Chris Campbell, who owned the house at which the party was taking place, intervened. *Id.* A friend of Crawford's then joined the fray. *Id.*

The fight soon spilled out of the house. Trial Tr.222–23, 322. Crawford followed Yanetta and Dickens as they exited. Trial. Tr.322. Once outside, Crawford retrieved his gun from his car and began shooting it into the air. Trial Tr.531, 541–42. As Yanetta and Dickens started to leave, Yanetta heard four thumps and saw Dickens slump over after he got into the car. Trial Tr.230–31. Dickens realized that he had been shot, and he and Yanetta immediately drove to a nearby hospital. *Id.* Dickens later died of his wounds. Trial Tr.383–84.

2. For his role in causing Dickens’s death, the State indicted Crawford on four counts: murder in violation of R.C. 2903.02(B), discharge of a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3), having a weapon under disability in violation of the Felon-in-Possession Statute, and involuntary manslaughter in violation of R.C. 2903.04(A). Indictment, R.1. The involuntary-manslaughter charge asserted that Dickens was killed as a proximate result of Crawford’s decision to illegally possess or use a firearm in violation of the Felon-in-Possession Statute. *Id.*, p.2.

Crawford’s defense focused on the issue of proximate causation. *See* Trial Tr. 603–04. Crawford admitted that he had the gun and that he fired it outside of Campbell’s house. Trial Tr.531. What is more, at least two other party guests in addition to Larissa Yanetta saw Crawford shooting into the air. Trial Tr.264, 350–51. But while Crawford did not deny firing his gun, he *did* deny firing the fatal shot. Trial Tr.533–34. According to Campbell’s girlfriend (another party guest), Trial Tr.344, Crawford’s



friend had a gun of his own and used that gun to shoot Dickens before fleeing the scene on foot, Trial Tr.354. Thus, Crawford argued, he was not the proximate cause of Dickens's death.

A jury acquitted Crawford of murder, but it convicted him of the remaining charges, including having a weapon under disability in violation of the Felon-in-Possession Statute. Nunc Pro Tunc Entry, R.33. Having a weapon under disability is a third-degree felony. R.C. 2923.13(B). And the jury relied on that felony to conclude that Crawford was guilty of involuntary manslaughter for committing a felony that proximately caused Dickens's death. (The jury also convicted Crawford of discharging a firearm near a prohibited premises, but that conviction wound up being only a misdemeanor-level offense because the jury did not also find beyond a reasonable doubt that Crawford caused any physical harm when he fired his gun. See Nunc Pro Tunc Entry, R.33.) The trial court sentenced Crawford to an aggregate term of thirteen years in prison. Sentencing Entry, R.34.

3. Crawford appealed, raising two assignments of error. Relevant here, Crawford asserted that there was insufficient evidence to support his involuntary-manslaughter conviction because a violation of the Felon-in-Possession Statute cannot proximately result in another's death. Crawford App.Ct.Br. 6–10. Crawford's argument in support of that assignment of error was more nuanced. He appeared to concede that *using* a firearm in violation of the Felon-in-Possession Statute could proxi-

mately cause another's death and thus provide the predicate felony for an involuntary-manslaughter conviction. Crawford App.Ct.Br.8–9. But he argued that this could not support *his* conviction because the jury's verdict did not specify the theory under which it convicted him. The jury did not, in other words, indicate whether Crawford was guilty of violating the Felon-in-Possession Statute because he *used* his gun or because he acquired, had, or carried that gun. *Id.*

The Eighth District rejected Crawford's appeal and affirmed his conviction and sentence. *State v. Crawford*, 2020-Ohio-2939 ¶1 (8th Dist.) ("App.Op."). It agreed with Crawford that the jury's verdict did not specify the theory under which he was convicted of having a weapon under a disability. *Id.* ¶37. But it concluded that the ambiguity did not matter. *Id.* There was ample evidence, the Eighth District held, that Crawford had committed all of the acts prohibited by the Felon-in-Possession Statute: he acquired, had, carried, *and* used a gun. *Id.* ¶¶39–40. There was evidence that Crawford started the fight that led to Dicken's death, threatened others with violence, escalated the fight, and then brandished and fired a gun. *Id.* Because Crawford had challenged his conviction on the ground that it was supported by insufficient evidence, the Eighth District viewed the relevant evidence in the light most favorable to the State. After doing so, the court concluded that there was sufficient evidence to support the jury's determination that "Dickens's death was the proximate result of Crawford having a weapon while under disability." *Id.* ¶40.

4. Crawford appealed to this Court, raising two propositions of law. The Court accepted Crawford's appeal on a single proposition of law, which asserted that having a weapon under a disability "cannot in the ordinary course of things" serve as the predicate felony to an involuntary-manslaughter conviction. *State v. Crawford*, \_\_\_ Ohio St. 3d \_\_\_, 2020-Ohio-4612.

## ARGUMENT

### **Amicus Curiae Ohio Attorney General's Proposition of Law:**

*A violation of R.C. 2923.13(A), which prohibits certain individuals from possessing or using a firearm, can serve as the predicate offense for a conviction of involuntary manslaughter when the violation of that statute proximately causes the death of another.*

A convicted felon who uses or possesses a gun in violation of the Felon-in-Possession Statute may be convicted of involuntary manslaughter under R.C. 2903.04(A). Crawford makes no persuasive argument otherwise. He has abandoned the argument that he raised below, and the argument that he raises now is without merit. The Court should affirm the Eighth District's decision upholding Crawford's involuntary-manslaughter conviction, as Crawford gives the Court no plausible basis for reversing.

#### **A. Violations of the Felon-in-Possession Statute can serve as the predicate felony on which an involuntary-manslaughter conviction is based.**

This case presents the question whether violations of the Felon-in-Possession Statute can form the predicate felony for involuntary manslaughter under R.C. 2903.04(A). The answer to that question is "yes."

This follows, first and foremost, from the text of R.C. 2903.04(A). A defendant is guilty of involuntary manslaughter if he or she commits “a felony,” the “proximate result” of which is the death of another. R.C. 2903.04(A). The nature of the felony is irrelevant. For purposes of R.C. 2903.04(A), all that matters is that the defendant committed a felony and that the felony in turn proximately caused the death of another person. *Id.*; *see also State v. Carpenter*, 2019-Ohio-58, ¶58 (3d Dist.) (holding that the General Assembly intended to adopt a proximate-cause standard under R.C. 2903.04(A)); *State v. Chambers*, 53 Ohio App. 2d 266, 269 (9th Dist. 1977) (same). A violation of the Felon-in-Possession Statute is a felony. R.C. 2923.13(B). Thus, violations that proximately cause the death of another constitute involuntary manslaughter.

The Eighth District’s decision below is consistent with this reasoning. Everyone, including Crawford, agrees that Crawford violated the Felon-in-Possession Statute when he brandished and fired his gun during the fight. Crawford Br.4; *see also* App.Op.¶¶ 22, 36, 39. Thus, Crawford was guilty of involuntary manslaughter if his violation of the Felon-in-Possession Statute proximately caused the death of another. The Eighth District held that there was sufficient evidence to support probable cause. App.Op.¶40. On that basis, it found sufficient evidence to support Crawford’s involuntary-manslaughter conviction.

**B. Crawford's challenge to the Eighth District's decision affirming his involuntary-manslaughter conviction is without merit.**

Crawford has not appealed the Eighth District's determination that there was sufficient evidence to support the jury's determination that his violation of the Felon-in-Possession Statute proximately caused Dickens's death. (As such, this case affords the Court no basis to reexamine the sufficiency of the evidence that Crawford's actions were the proximate cause of Dickens's death.) Instead of making the argument he raised below, Crawford asks this Court to adopt a sweeping rule that would prevent a violation of the Felon-in-Possession Statute from ever serving as the predicate offense for an involuntary-manslaughter charge under R.C. 2903.04(A). The Court should reject his argument.

In this Court, Crawford argues that the Felon-in-Possession Statute can be the predicate "felony" for an involuntary-manslaughter conviction under R.C. 2903.04(A) only if the same felony that provides the basis for a disability under the Felon-in-Possession Statute is *also* a proximate cause of death under R.C. 2903.04(A). *See* Crawford Br.5–7. In other words, Crawford says that the Felon-in-Possession Statute can qualify as a predicate offense under R.C. 2903.04(A) *only if* the same felony that makes the defendant a felon subject to the Felon-in-Possession Statute is also the proximate cause of the death for which the defendant is charged under R.C. 2903.04(A). *See* Crawford Br.4–7.

Crawford's argument fails for two independent reasons. First, it finds no basis in the statutory text. The question here is whether a violation of the Felon-in-Possession Statute is a "felony" that can serve as the predicate offense under R.C. 2903.04(A). And under the plain text of R.C. 2903.04(A), the answer is "yes." Again, that section defines involuntary manslaughter to encompass cases in which the commission of "a felony" is the proximate cause of someone's death. When a defendant causes someone's death through his violation of the Felon-in-Possession Statute, that defendant has satisfied the elements of R.C. 2903.04(A). There is nothing in R.C. 2903.04(A) that permits reading any further requirements into the statute when the predicate felony is a violation of the Felon-in-Possession Statute.

The second problem with Crawford's proposed rule is perhaps more glaring: the test Crawford proposes is literally impossible to satisfy. The felony that subjects someone to the requirements of the Felon-in-Possession Statute will *always* come before, and thus be distinct from, a later violation of the Felon-in-Possession Statute. After all, one cannot violate the Felon-in-Possession Statute without first being made subject to it. Thus, the felony that subjects someone to the Felon-in-Possession Statute will *never* be the felony that causes a death for which the Felon-in-Possession Statute is a proximate cause. This means that, under Crawford's test, violations of the Felon-in-Possession Statute will constitute a predicate felony under R.C. 2903.04(A) only in circumstances

that cannot possibly arise. Even Crawford appears to acknowledge as much. Crawford Br.5.

Crawford argues that the Court must adopt his interpretation of R.C. 2903.04(A) in spite of these problems, though the basis for his argument is unclear. He cites the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 10 and 16 of the Ohio Constitution. But that is all he does. His brief contains no substantive argument based on any of those constitutional provisions.

Crawford additionally suggests that his interpretation is required because gun ownership is a right guaranteed by the Second Amendment to the United States Constitution and by Article I, §4 of the Ohio Constitution. Crawford Br.5. He is right that the U.S. and Ohio constitutions protect an individual's right to keep and bear arms. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008); *Arnold v. City of Cleveland*, 67 Ohio St. 3d 35, 43 (1993). But that insight is irrelevant for this case. Read charitably, Crawford's allusion to these provisions is meant to invoke the constitutional-avoidance canon, which requires that courts interpret statutes "to avoid constitutional difficulties ... if such a construction is fairly possible." *Boos v. Barry*, 485 U.S. 312, 331 (1988). That doctrine, however, is irrelevant to this case. True enough, while everyone seems to agree that States may ban previously convicted felons from possessing weapons in at least some circumstances, *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (citing *Heller*, 554 U.S. at 626–27); *see also State v. Weber*, \_\_\_ Ohio St. 3d \_\_\_, 2020-Ohio-6832, ¶9, there

is less agreement regarding whether these laws are constitutional in their applications to non-violent felons, *see, e.g., Kanter v. Barr*, 919 F.3d 437, 451 (7th Cir. 2019) (Barrett, J., dissenting); C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695 (2009). This case, however, does not implicate that debate because it does not involve a challenge to the Felon-in-Possession Statute. Instead, it involves the question whether a violation of the Felon-in-Possession Statute can constitute a predicate “felony” for purposes of R.C. 2903.04(A). Because the answer is unambiguously “yes” as a matter of the statutory text, there is no work for the constitutional-avoidance canon to do. “The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as *a means of choosing between them.*” *Clark v. Suarez Martinez*, 543 U.S. 371, 385 (2005); *accord Boumediene v. Bush*, 553 U.S. 723, 787 (2008). Because R.C. 2903.04(A) is not susceptible of being read to silently incorporate Crawford’s impossible-to-satisfy rules regarding the Felon-in-Possession Statute’s ability to serve as a predicate felony, any constitutional concerns are irrelevant to the statutory question presented.

## CONCLUSION

The Court should affirm the Eighth District’s decision below.



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## CERTIFICATE OF SERVICE

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