

STATE OF MICHIGAN

SUPREME COURT

*Opn 3-2574*

BONNIE BLACK, as Next Friend of JESSICA  
BITNER, a Minor,

Plaintiff-Appellant, *ee*

v

WILLIAM SHAFER, MARY SHAFER, and IAN  
GEARHART,

Defendants,

and

ANTHONY SHAFER,

Defendant-Appellee. *aut* *ok*

Case Number:  
er:312379 *5/12 00am*  
e Number: 11-010645-NO  
Hathaway

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NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

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*# 43889*

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**Exhibits attached to this Brief:**

- Exhibit A** Shafer's Motion for Summary Disposition.
- Exhibit B** Deposition of Plaintiff
- Exhibit C** Deposition of Anthony Shafer
- Exhibit D** Deposition of Mary Shafer
- Exhibit E** Deposition of William Shafer
- Exhibit F** Motion for Reconsideration
- Exhibit G** Offender Tracking Information System information and Register of Actions from Wayne County Circuit Court related to Ian Gearhart
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- Exhibit I** *Uplinger v. Howe*, unpublished opinion per curiam of the Court of Appeals issued March 20, 2012 (Docket No. 933752), lv den'd 492 Mich. 867, 819 N.W.2d 881 (2012)

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- Appendix 1 *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379)
- Appendix 2 May 12, 2014 Order Denying Motion for Reconsideration
- Appendix 3 June 8, 2012 Order Granting Summary Disposition to Anthony Shafer
- Appendix 4 June 19, 2012 Order Granting Summary Disposition to William and Mary Shafer

## JUDGMENT OR ORDER BEING APPEALED AND RELIEF SOUGHT

Pursuant to MCR 7.301(A)(2), Defendant-Appellant, Anthony Shafer, seeks leave to appeal from the March 25, 2014 Opinion of the Michigan Court of Appeals which reversed the trial court's Order Granting Summary Disposition to Anthony Shafer<sup>1</sup> and the May 12, 2014 Order of the Michigan Court of Appeals Denying Anthony Shafer's Motion for Reconsideration.<sup>2</sup>

Defendant-Appellant respectfully requests this Honorable Court peremptorily reverse the Court of Appeal's decision and reinstate the decision of the trial court granting summary disposition to Anthony Shafer, or, in the alternative, grant leave to appeal.

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<sup>1</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>2</sup> See **Appendix 2**, May 12, 2014 Order Denying Motion for Reconsideration.

**STATEMENT OF QUESTIONS INVOLVED**

- I. DID THE COURT OF APPEALS ERR IN FINDING THAT DEFENDANT-APPELLANT OWED PLAINTIFF-APPELLEE A DUTY OF ORDINARY CARE WHEN DEFENDANT-APPELLANT WAS NOT THE OWNER OF THE GUN OR THE PROPERTY AND PLAINTIFF-APPELLEE WAS MERELY A SOCIAL GUEST ON THE PREMISES AND WAS INJURED BY AN UNFORESEEABLE GUNSHOT?**

The Court of Appeals says: "No"  
Defendant-Appellant says: "Yes"  
Plaintiff-Appellee would say: "No"

- II. DID THE COURT OF APPEALS ERR IN FINDING THAT A SPECIAL RELATIONSHIP EXISTED BETWEEN PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT WHEN THE RELATIONSHIP BETWEEN PLAINTIFF-APPELLEE AND DEFENDANT-APPELLANT WAS UNLIKE THE RECOGNIZED SPECIAL RELATIONSHIPS AND PLAINTIFF-APPELLEE "WAS NOT UNABLE TO PROTECT HERSELF"?**

The Court of Appeals says: "No"  
Defendant-Appellant says: "Yes"  
Plaintiff-Appellee would say: "No"

- III. DID THE COURT OF APPEALS ERR IN FINDING THAT A REASONABLE JURY COULD FIND THAT DEFENDANT-APPELLANT BREACHED A DUTY OF ORDINARY CARE TO PLAINTIFF-APPELLEE WHEN DEFENDANT-APPELLANT HAD PREVIOUSLY VERIFIED THAT THE SHOTGUN WAS NOT LOADED AND WHEN HE WAS NOT AWARE THAT PLAINTIFF-APPELLEE AND HER BOYFRIEND, GEARHART, WERE IN THE GARAGE OR THAT GEARHART WAS NEGLIGENTLY/CRIMINALLY HANDLING THE SHOTGUN?**

The Court of Appeals says: "No"  
Defendant-Appellant says: "Yes"  
Plaintiff-Appellee would say: "No"

## **STANDARD OF REVIEW AND GROUNDS FOR RELIEF**

MCR 7.302(B)(5) provides that Application for Leave to Appeal to the Supreme Court may be granted on the grounds that the decision from the Court of Appeals is clearly erroneous and will cause material injustice or conflicts with Supreme Court or other Court of Appeals' decisions, or pursuant to MCR 7.302(B)(3), involves legal principals of major significance to the state's jurisprudence.

The decision of the Court of Appeals is clearly erroneous, will cause material injustice, conflicts with decisions of this Court and the Court of Appeals, and involves legal principals of major significance to Michigan's jurisprudence.

## STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

### Introduction

Plaintiff, 16-year-old Jessica Bitner ("Plaintiff"), was shot in the leg by her boyfriend, Ian Gearhart ("Gearhart"), while Plaintiff and Gearhart were social guests at Anthony Shafer's ("Shafer") grandparents' home. At issue in this case is whether Shafer (who did not own the gun or the property) owed a duty to Plaintiff (a social guest) to protect her from an unforeseeable gunshot. Shafer filed a Motion for Summary Disposition on the basis that (1) he did not owe Plaintiff a duty; (2) in the alternative, if he did owe Plaintiff a duty, he did not breach that duty.<sup>3</sup> The trial court granted Shafer's Motion for Summary Disposition finding that (1) there was no special relationship between Plaintiff and Shafer, (2) Shafer did not breach any duty to Plaintiff, and (3) it was unforeseeable that Gearhart would pick up the gun, rack a shell into the chamber and then discharge it.<sup>4</sup> The Court of Appeals (in a split decision) reversed the trial court's decision.<sup>5</sup>

### Factual Background

The instant lawsuit arises out of a non-fatal, gun shot accident that occurred in the early morning hours of July 21, 2011 in Belleville, Michigan. The Defendant-Appellant, Anthony Shafer ("Shafer"), is the half brother of the Gearharts, but he lives with his grandparents, William Shafer and Mary Shafer, at 12921 Lakepointe Pass, Belleville, MI, 48111. On July 20, 2011, Plaintiff, Jessica Bitner ("Plaintiff"), Kayla Warden, Stephanie Sutton, Dustin Gearhart, and Ian Gearhart arrived at William and Mary Shafers' home to

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<sup>3</sup> Exhibit A, Shafer's Motion for Summary Disposition.

<sup>4</sup> Appendix 3, June 8, 2012 Order Granting Defendant's Motion for Summary Disposition; Appendix 5, Trial Court Hearing Transcript for Defendant's Motion for Summary Disposition.

<sup>5</sup> See Appendix 1, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

go swimming with Anthony Shafer.<sup>6</sup> After swimming for a few hours, Kayla Warden drove Plaintiff, Dustin Gearhart, and Stephanie Sutton home. Ian Gearhart ("Gearhart"), who was 21 years old at the time, went with Shafer to the store and then to get something to eat.<sup>7</sup>

Once Plaintiff and Mrs. Sutton were back home, they received a phone call from Gearhart and Shafer. The two boys stated that they were going to come pick them up and bring them back to William and Mary Shafers' home. Plaintiff, who was 16 years old at the time, was dating Gearhart and lived with him.<sup>8</sup> When the group of four got back to the Shafers' house, it was around midnight.<sup>9</sup> Although Shafer and Gearhart (who were both of legal drinking age) were drinking alcohol, Shafer does not recall Plaintiff or Ms. Sutton drinking any alcohol and he did not offer any alcohol to them.<sup>10</sup> While they were in the garage, Ms. Sutton noticed a shotgun leaning against the wall, in an alcove, between a shelf and a speaker.<sup>11</sup> The shotgun was legally owned by Mr. and Mrs. Shafer and was kept in the garage for home protection.

After Ms. Sutton noticed the shotgun in the garage, Gearhart attempted to pick it up. However, Shafer took the shotgun from him and checked to make sure that the gun was

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<sup>6</sup> **Exhibit B**, Deposition of Plaintiff, p. 27

<sup>7</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 28.

<sup>8</sup> **Exhibit B**, Deposition of Plaintiff, pgs. 7, 9-10.

<sup>9</sup> **Exhibit B**, Deposition of Plaintiff, p. 39.

<sup>10</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 31, 41-42.

<sup>11</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 31. It sat against the wall in a five inch gap between a table made of speakers and a set of shelves. The shelves and speakers extended about 18-20 inches out from the wall and the shotgun sat all the way back inside this gap. **Exhibit D**, Deposition of Mary Shafer, pgs. 14-15; **Exhibit E**, Deposition of William Shafer, pgs. 22-23, 39.

not loaded.<sup>12</sup> There were no shells in the chamber, and there were only two shells in the gun's magazine/reserve.<sup>13</sup> Therefore, the shotgun could not fire a bullet without a shell being racked into the chamber. Shafer pulled the slide back to look in the chamber and then pulled the trigger to confirm that the shotgun was not loaded.<sup>14</sup> Gearhart then held and examined the shotgun, and put it back in the spot that it was found.<sup>15</sup> That was the only time that evening that the gun was handled by anyone in the presence of Shafer.<sup>16</sup>

The group of four then left the garage and went down to the lake (which was approximately 100 yards away) to swim.<sup>17</sup> After about an hour down by the lake, Plaintiff and Gearhart returned to the garage at around 4:00 a.m. Shafer and Ms. Sutton stayed down by the water.<sup>18</sup> Shafer did not even realize that the other two had went to the garage because he was down the shoreline swimming by himself.<sup>19</sup> Plaintiff changed back into her clothes once she got back into the garage with Gearhart.<sup>20</sup> At that time, Plaintiff noticed that Gearhart was holding the shotgun in his hand. Gearhart walked behind Plaintiff, while

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<sup>12</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 32.

<sup>13</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 32-33.

<sup>14</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 32.

<sup>15</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 32-33.

<sup>16</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 32-33.

<sup>17</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 33.

<sup>18</sup> **Exhibit B**, Deposition of Plaintiff, pgs. 46-47.

<sup>19</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 35.

<sup>20</sup> **Exhibit B**, Deposition of Plaintiff, p. 47.

holding the shotgun. Plaintiff then heard the shotgun go off, and it hit her in the back of the left leg near the ankle.<sup>21</sup>

Shafer, who was still swimming at the time, heard screams coming from up near the house. That is when Shafer noticed that Gearhart and Plaintiff were no longer down by the lake.<sup>22</sup> Once he heard the screams, Shafer began swimming back towards the shore. As he was getting out of the water, Shafer saw Gearhart running toward the lake. Gearhart informed Shafer that Plaintiff had been shot.<sup>23</sup>

### **Procedural History**

On or about September 1, 2011, Plaintiff's mother filed the current lawsuit against William and Mary Shafer, Defendant-Appellant Anthony Shafer, and Ian Gearhart. Plaintiff alleged that William and Mary Shafer and Defendant-Appellant Anthony Shafer:

- a. created a dangerous and hazardous condition so as to endanger the Plaintiff;
- b. allowed a hazardous condition to exist on his premises;
- c. failed to exercise reasonable care for Plaintiff's safety in the circumstances;
- d. negligently left a loaded firearm in the garage;
- e. failed to keep the firearm in a locked storage area;
- f. failed to properly and adequately supervise the individuals on his premises;
- g. negligently allowed a loaded firearm in an unlocked area where alcoholic beverages were being consumed; and
- h. committed other acts of negligence which are herewith reserved for proof at the time of trial.

On February 22, 2012, William and Mary Shafer filed a Motion for Summary Disposition. The Shafers argued that they were not liable because they did not owe Plaintiff a duty. In addition, they argued that even if they did owe Plaintiff a duty, they did

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<sup>21</sup> **Exhibit B**, Deposition of Plaintiff, p. 55.

<sup>22</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 35.

<sup>23</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 34-36.

not breach any duty owed to Plaintiff. Mr. and Mrs. Shafer's Motion for Summary Disposition was granted at the hearing on April 20, 2012.<sup>24</sup> Plaintiff did not appeal the trial court Order granting summary disposition to Mr. and Mrs. Shafer despite the fact that Mr. and Mrs. Shafer owned the house and the gun.<sup>25</sup>

On April 12, 2012, Anthony Shafer filed a Motion for Summary Disposition arguing that: (1) he did not owe Plaintiff a duty; (2) in the alternative, if he did owe Plaintiff a duty, he did not breach that duty.<sup>26</sup> On June 8, 2012, the trial court entered an Order Granting Shafer's Motion for Summary Disposition.<sup>27</sup> At the hearing on Shafer's Motion for Summary Disposition, the trial court agreed with Shafer that (1) there was no special relationship between Plaintiff and Shafer, (2) Shafer did not breach any duty to Plaintiff, and (3) it was unforeseeable that Gearhart would pick up the gun, rack a shell into the chamber and then discharge it.<sup>28</sup>

Default judgment against Gearhart was entered on August 24, 2012. On September 13, 2012, Plaintiff filed a Claim of Appeal pursuant to MCR 7.204(A)(1)(a) against Anthony Shafer only, appealing the June 8, 2012 Order Granting Summary Disposition in his favor.

On March 25, 2014, the Court of Appeals issued an opinion (a 2-1 decision) reversing the trial court's decision on the basis that: (1) Shafer owed Plaintiff a duty of

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<sup>24</sup> **Appendix 4**, June 19, 2012 Order Granting Summary Disposition to William and Mary Shafer.

<sup>25</sup> **Exhibit E**, Deposition of William Shafer, pgs. 3-5; **Exhibit D**, Deposition of Mary Shafer, p. 12.

<sup>26</sup> **Exhibit A**, Shafer's Motion for Summary Disposition.

<sup>27</sup> **Appendix 3**, June 8, 2012 Order Granting Defendant's Motion for Summary Disposition

<sup>28</sup> **Appendix 3**, June 8, 2012 Order Granting Defendant's Motion for Summary Disposition; **Appendix 5**, Trial Court Hearing Transcript for Defendant's Motion for Summary Disposition.

ordinary care; (2) a reasonable jury could find that Shafer breached that duty because he failed to make the shotgun safe; and (3) a special relationship existed between Plaintiff and Shafer because Shafer picked Plaintiff up in his vehicle, provided minor Plaintiff with alcohol, and allowed her in his garage with an intoxicated person and a loaded shotgun.<sup>29</sup>

Honorable Kathleen Jansen dissented from the majority opinion on the basis that: (1) Plaintiff was a licensee; (2) Shafer owed no duty to protect Plaintiff from the unexpected and unforeseeable gunshot; (3) there was no special relationship between Plaintiff and Shafer; and (4) no reasonable juror could conclude that Shafer breached the limited duty of care that he owed to Plaintiff as a licensor.<sup>30</sup>

On April 14, 2014, Shafer filed a Motion for Reconsideration on the basis that a palpable error had been made and the Court of Appeals had been misled in that (1) Shafer owed no duty to Plaintiff, (2) social host liability is inapplicable to the case at hand, (3) Plaintiff's status as a licensee is relevant to the case, and (4) no special relationship exists between Plaintiff and Shafer.<sup>31</sup> On May 12, 2014, the Court of Appeals denied Shafer's Motion for Reconsideration.<sup>32</sup>

Shafer now brings this Application for Leave to Appeal from the March 25, 2014 opinion of the Michigan Court of Appeals reversing the trial court's granting of Shafer's Motion for Summary Disposition.

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<sup>29</sup> **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>30</sup> **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), Dissenting Opinion.

<sup>31</sup> **Exhibit F**, Motion for Reconsideration.

<sup>32</sup> See **Appendix 2**, May 12, 2014 Order Denying Motion for Reconsideration. Honorable Jansen would grant the Motion for Reconsideration.

## ARGUMENT

### I. Defendant Owed No Duty To Plaintiff.

The essence of all of Plaintiff's allegations against Shafer is that he breached a duty to prevent Plaintiff's injuries. The claims against Shafer were correctly dismissed by the trial court because Shafer did not owe Plaintiff any duty on the night of the incident.

In order to make a prima facie case of negligence, the **plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages.**" *Terry v. Detroit*, 226 Mich App 418, 424; 573 N.W.2d 348 (1997), *citing Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 203; 544 N.W.2d 727 (1996). (Emphasis added). Whether a duty exists is a question of law for the court. *Simko v Blake*, 448 Mich 648, 655; 532 N.W.2d 842 (1995). If a court determines as a matter of law that a defendant owed no duty to a plaintiff, summary disposition is appropriate under MCR 2.116(C)(8). *Terry, supra*, at 424, *citing Dykema v Gus Macker Enterprises, Inc.*, 196 Mich App 6, 9; 492 N.W.2d 472 (1992).

"Duty is actually a question of whether the defendant is under any obligation for the benefit of the particular plaintiff and concerns the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other." *Buczowski v. McKay*, 441 Mich 96; 490 N.W.2d 330 (1992), *citing Friedman v Dozorc*, 412 Mich 1, 22; 312 N.W.2d 585 (1981); *Prosser & Keeten, Torts* (5<sup>th</sup> Ed), § 53, p. 356. According to *Prosser*, "[d]uty is not sacrosanct in and of itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection." *Buczowski, supra*, at 100-101, *citing Prosser, supra*, at 358.

A negligence action can be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm. *Graves v Warner Bros.*, 253 Mich App 486; 656 N.W2d 195 (2003), citing *Maiden v Rozwood*, 461 Mich 109, 131-132; 597 N.W2d 817 (1999). The factors that a court should consider when determining whether the relationship between the parties is such that an obligation should be imposed on one for the benefit of another include:

**foreseeability of the harm, existence of a relationship between the parties involved, degree of certainty of injury, closeness of connection between the conduct and the injury, moral blame attached to the conduct, policy of preventing future harm, and the burdens and consequences of imposing a duty and the resulting liability for breach.** *Graves*, *supra*, at 492-493, citing *Krass v Tri-County Security, Inc.*, 233 Mich App 661; 593 N.W2d 578 (1999). See also *Buczkowski*, *supra* at 100-101; *Terry*, *supra*. (Emphasis added).

#### **A. The Incident Was Unforeseeable**

The first component examined by the court is the foreseeability of the harm. *Buczkowski*, *supra* at 101. In the current matter, Plaintiff's injuries were the result of her boyfriend, Gearhart, shooting her in the back of the left leg near the ankle.<sup>33</sup> Gearhart was 21 years old at the time of the accident. He was an adult and could appreciate the danger of a firearm. It is beyond dispute that the actions of Gearhart constituted criminal conduct. Gearhart has since been arrested, and he plead guilty to negligent discharge of a firearm in relation to the shooting.<sup>34</sup> In Michigan, it is well-established that third-party criminal acts

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<sup>33</sup> **Exhibit B**, Deposition of Plaintiff, p. 55; **Exhibit C**, Deposition of Anthony Shafer, pgs.16, 47.

<sup>34</sup> The majority in *Black v. Shafer* recognized that "[i]t is undisputed that Gearhart's firing of the gun constituted a criminal activity. Moreover, Michigan's Offender Tracking Information System reveals that Gearhart pleaded guilty to careless, reckless, or negligent use of a firearm resulting in injury, MCL 752.861, as a result of this incident." **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379); See also **Exhibit G**, Offender Tracking Information System information and Register of Actions from Wayne County Circuit Court related to Ian Gearhart.

are unforeseeable by nature, and they relieve a defendant property owner from liability for the consequences of the criminal acts. See *Papadimas v. Mykonos Lounge*, 176 Mich App 40, 46-47; 439 N.W.2d 280 (1989); *Williams v. Cunningham Grocery Stores*, 429 Mich 495, 498-499; 418 N.W.2d 381 (1988); *MacDonald v. PKT, Inc.*, 464 Mich 322; 628 N.W.2d 33 (2001). Anthony Shafer is even more removed from this incident as he is not the property owner or even the owner of the shotgun.<sup>35</sup>

The rationale underlying this general rule is the fact that “[c]riminal activity, by its deviant nature, is normally unforeseeable.” *Papadimas, supra* at 46-47. The *Papadimas* Court emphasized that “[u]nder all ordinary and normal circumstances, in the absence of any reason to expect the contrary, the actor may reasonably proceed upon the assumption that others will obey the criminal law.” *Papadimas, supra* at 47.

Shafer could not have foreseen this incident as he did not have any notice that Plaintiff and Gearhart were even in the garage. Therefore, there was no way that Shafer could have known that Gearhart was handling the firearm. Shafer testified that he was swimming in the lake with Plaintiff, Gearhart, and Ms. Sutton. He was not aware of Plaintiff going back to the garage until after the accident took place.<sup>36</sup> He first noticed that Plaintiff and Gearhart were not down by the lake when he heard Plaintiff scream.<sup>37</sup> Shafer could not foresee the criminal handling of the firearm by Gearhart.

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<sup>35</sup> **Exhibit E**, Deposition of William Shafer, pgs. 3-5; **Exhibit D**, Deposition of Mary Shafer, p.12.

<sup>36</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 34-35.

<sup>37</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 34-35.

Further, Shafer could not have foreseen the resulting gunshot. As Honorable Jansen recognized in the dissenting opinion in *Black v. Shafer*<sup>38</sup>, this Honorable Court has held, in a different context, that “no bodily harm can be foreseen when a person pulls the trigger of what he believes to be an unloaded gun; under such circumstances, it is unforeseeable that a shot will be discharged.” *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014, Dissenting Opinion, citing *Allstate Ins. Co. v. McCam*, 466 Mich. 277, 290-291; 645 N.W.2d 20 (2002). Shafer had previously taken the firearm from Gearhart in order to check that it was not loaded.<sup>39</sup> There were no shells in the chamber. There were only two shells in the gun’s magazine/reserve. Therefore, the shotgun could not fire a bullet without a shell being racked into the chamber. Shafer could not foresee that later in the evening Plaintiff and Gearhart would go back to the garage alone, Gearhart would pick up the firearm, rack a shell into the gun’s chamber, aim it in the direction of Plaintiff, and then pull the trigger causing it to fire. Even if it was foreseeable that Gearhart would pull the trigger (it was not), because there were no shells in the chamber, Shafer could not have foreseen the resulting gunshot.

In addition, if the criminal acts of Gearhart were actually foreseeable, then it is doubtful that Plaintiff would have chosen to spend her time with Gearhart. In *Lelito v. Monroe*, 273 Mich App 416; 729 N.W.2d 564 (2007), the Court of Appeals considered whether a property owner was negligent in a situation that is analogous to the current matter. In *Lelito*, the defendant allowed the plaintiff’s decedent and her boyfriend, a known felon, to move in with him. Defendant kept an unlocked revolver in his bedroom. This was

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<sup>38</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), dissenting opinion.

<sup>39</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 32.

known by all of the occupants of the home. The decedent's boyfriend retrieved the revolver and shot and killed plaintiff's decedent. The defendant was alleged to have been negligent "in leaving a loaded firearm in a location known to [the boyfriend], whom defendant knew to be a convicted felon." *Id.* at 417. The defendant argued that he did not owe plaintiff's decedent a duty because the incident was unforeseeable. *Id.* at 417. The Court of Appeals considered the defendant's "obvious point that, 'if the murder was actually foreseeable, certainly [the decedent] would not have invited her future murderer to live with herself ....'" *Id.* at 421. The Court of Appeals held that the defendant had no duty to anticipate the boyfriend's criminal activity if the decedent apparently did not. *Id.* at 421. After just considering the foreseeability factor, the Court of Appeals in *Lelito* held that "[t]here being no genuine issue of material fact whether it was foreseeable to defendant that [the boyfriend] would seize his firearm and turn it on the decedent, defendant owed no duty regarding storage of the gun, and there is thus no basis for imposing liability on defendant." *Id.* at 422.

Just as in *Lelito, supra*, the current incident was unforeseeable to both Plaintiff and Shafer. Plaintiff and Gearhart were dating and lived together just as the boyfriend and decedent did in *Lelito*.<sup>40</sup> Plaintiff did not anticipate Gearhart would shoot her when Gearhart was handling the shotgun in the garage.<sup>41</sup> If Plaintiff was unable to foresee Gearhart's criminal activity, then Shafer cannot be expected to foresee the criminal activity.

There was nothing foreseeable about the current incident. The criminal acts of Gearhart were not foreseeable; Shafer lacked any notice that Plaintiff and Gearhart were in the garage; Shafer could not foresee Gearhart's negligent handling of the firearm; and

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<sup>40</sup> **Exhibit B**, Deposition of Plaintiff, pgs. 7, 9-11.

<sup>41</sup> **Exhibit B**, Deposition of Plaintiff, p. 55.

because there were no shells in the gun's chamber, Shafer could not have foreseen the resulting gunshot.

**B. Plaintiff Was A Licensee**

Plaintiff's status as a licensee is relevant to the question of whether Shafer owed Plaintiff a duty. The majority in *Black v. Shafer*<sup>42</sup>, stated that the question of whether Plaintiff was an invitee or licensee is irrelevant as this is a negligence case, not a premises liability case. However, the allegations in Plaintiff's complaint and Plaintiff's own admissions demonstrate otherwise. In her Response to Defendant's Motion for Summary Disposition, Plaintiff characterizes this as a "negligence/premises liability case".<sup>43</sup> Plaintiff further states "[a]s it pertains to premises liability allegations . . . Plaintiff admits that she was a social guest at the time of the incident...".<sup>44</sup> Further, the Complaint sounds in premises liability, alleging that Shafer breached a duty owed to the general public by:

- a. creating a dangerous and hazardous condition so as to endanger the Plaintiff;
- b. allowing a hazardous condition to exist on his premises;
- c. failure to exercise reasonable care for Plaintiff's safety in the circumstances;
- d. negligently leaving a loaded firearm in the garage;
- e. failing to keep the firearm in a locked storage area;
- f. failing to properly and adequately supervise the individuals on his premises;
- g. negligently allowing a loaded firearm in an unlocked area where alcoholic beverages were being consumed;

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<sup>42</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>43</sup> **Exhibit H**, Plaintiff's Response to Defendant's Motion for Summary Disposition, pgs. 3, 5, 10.

<sup>44</sup> **Exhibit H**, Plaintiff's Response to Defendant's Motion for Summary Disposition, p. 10.

The dissenting opinion in *Black v. Shafer*<sup>45</sup> acknowledged the relevance of Plaintiff's status as a licensee, finding that Plaintiff was a licensee because she was a social guest of Shafer at his grandparents' home. "[A] licensee is entitled to expect only that he will be placed upon an equal footing with the possessor himself by an adequate disclosure of any dangerous conditions that are known to the possessor." *Black v. Shafer*,<sup>46</sup> dissenting opinion, citing *D'Ambrosio v. McCreedy*, 225 Mich. App. 90, 94; 570 N.W.2d 797 (1997). It cannot be disputed that Plaintiff was aware of the shotgun.

Further, "it is black-letter law that a defendant owes no duty to warn or protect a licensee with respect to an unforeseeable danger." *Black v. Shafer*,<sup>47</sup> dissenting opinion, citing *Stabnick v. Williams Patrol Service*, 151 Mich. App. 331, 334-335; 390 N.W.2d 657 (1986). As set forth above, Shafer could not foresee Gearhart's criminal acts and because there were no shells in the gun's chamber, Shafer could not have foreseen the resulting gunshot. Under Michigan law, Shafer owes no duty to warn or protect a licensee, such as Plaintiff, about an unforeseeable danger.

### **C. There Was No Special Relationship Between Plaintiff and Shafer**

Although the foreseeability factor was enough for the Court of Appeals in *Lelito*, *supra*, to dismiss the claims of negligence against the defendant, the other factors Michigan Courts consider to determine if there is a duty only furthers the argument that Shafer did not owe Plaintiff a duty. The second factor is whether there is an existence of

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<sup>45</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>46</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>47</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

a relationship between the parties involved. *Buczowski, supra* at 104. In general, there is no legal duty obligating one person or entity to aid or protect another. *Krass, supra* at 667-668. An individual has no duty to protect another from the criminal acts of a third party in the absence of a special relationship between the defendant and the plaintiff. See *Murdock v. Higgins*, 454 Mich 46; 559 N.W.2d 639 (1997); *Smith v. Jones*, 246 Mich App 270, 275; 632 N.W.2d 509 (2001). Examples of the requisite "special relationship" recognized in Michigan include: common carriers and passengers, innkeepers and guests, employer and employee, premises owners and invitees, merchants and invitees, landlord and tenants, and doctors and patients. See *Buczowski, supra*; *Krass, supra*; See also *Dykema v. Gus Macker Enterprises, Inc.*, 196 Mich. App. 6, 8; 492 N.W.2d 472 (1992). (Emphasis added).

In the instant case, none of the above-referenced special relationships are present. Plaintiff was merely a social guest of Shafer at his grandparents' home. Plaintiff was not on the property to provide any mutual benefit for Shafer or his grandparents. A social guest is considered a licensee as opposed to an invitee for purposes of determining the duty of care owed by the defendant. *Taylor v. Laban*, 241 Mich App 449, 453; 616 N.W.2d 229 (2000). "A licensee is on the premises of another because of some personal unshared benefit and is merely tolerated on the premises by the owner." *Id.* at 545. Because Plaintiff was merely a licensee on the property, there was no special relationship between Plaintiff and Shafer as recognized in Michigan. Therefore, Shafer had no duty to aid or protect Plaintiff in the current matter.

The majority in *Black v. Shafer*<sup>48</sup>, essentially creates a new category of special relationships by holding that a special relationship exists because Shafer “invited and picked up plaintiff, provided minor plaintiff with alcohol he purchased, and allowed the intoxicated minor plaintiff into his garage with the intoxicated Gearhart and a loaded, displayed, shotgun with its safety off.” Shafer has been unable to find any case law where a Michigan Court has found that there is a special relationship in a similar situation. Further, the alleged underage drinking had nothing to do with the current incident. As Honorable Jansen points out in the dissenting opinion in *Black v. Shafer*<sup>49</sup>, it is difficult to “understand why [Plaintiff’s] unlawful consumption of alcoholic beverages should somehow weigh in favor of finding a special relationship and a resulting duty to protect on the part of [Shafer].”

The relationship between Plaintiff and Shafer is unlike a common carrier and passenger, innkeeper and guest, employer and employee, invitor and invitee, landlord and tenant, or doctor and patient. See *Dykema v. Gus Macker Enterprises, Inc.*, 196 Mich. App. 6, 8; 492 N.W.2d 472 (1992). “The rationale behind imposing a duty to protect in these special relationships is based on control.” *Williams v. Cunningham Drug Stores, Inc.* 429 Mich. 495, 499-500; 418 N.W.2d 381 (1988). “The duty to protect is imposed on the person in control because he is best able to provide a place of safety.” *Id.* In this case, Plaintiff “was not unable to protect herself”.<sup>50</sup> She was able to appreciate the potential

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<sup>48</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>49</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>50</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379, dissenting opinion).

danger. She could have left the garage when Gearhart was handling the shotgun and removed herself from a possible position of danger. There was no special relationship between Shafer and Plaintiff in this case.

**D. Additional Factors Weigh in Favor of Shafer**

Each of the final factors, "degree of certainty of injury, closeness of connection between the conduct and the injury, moral blame attached to the conduct, policy of preventing future harm, and the burdens and consequences of imposing a duty and the resulting liability for breach,"<sup>51</sup> all weigh in favor of Shafer because, among other things, he did not have any notice that Plaintiff and Gearhart were in the garage at the time of the incident or that Gearhart would negligently/criminally handle the shotgun. As discussed above, Shafer did not even realize that anyone had went back up to the garage because he was down the shoreline swimming by himself. The first time Shafer knew of Plaintiff and Gearhart going up to the garage alone was when he heard screams coming from up near the house after Plaintiff had been shot due to Gearhart's criminal conduct.<sup>52</sup>

Without knowing the licensees went to the garage alone, there was not even a consideration that there could be an injury.<sup>53</sup> Shafer could not be certain of Plaintiff being shot when he thought they were no where near the unloaded shotgun. In addition, the fact that there was an unloaded home protection weapon on the property, which was not illegal, was not a close connection to the injury. The close connection to the injury was Gearhart, who was 21 years old at the time, handling a shotgun in a negligent/criminal manner.

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<sup>51</sup> See *Graves, supra*, at 492-493.

<sup>52</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 34-36.

<sup>53</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 35.

There could be no moral blame attached to the conduct of Shafer. Having a legal home protection weapon on the property, while hosting the licensees down at the lake, should not result in any moral blame when the licensees went into the home unaccompanied by Shafer, and Gearhart shot Plaintiff. Shafer had previously checked to confirm that the firearm was not loaded.<sup>54</sup> **In addition, Shafer was not even the owner of the firearm or the property.** William and Mary Shafer were the property owners. They also owned the shotgun that Gearhart criminally handled.<sup>55</sup> Although William and Mary Shafer were the owners of the property and the firearm, Plaintiff did not challenge the trial court's decision to dismiss them from the current lawsuit.<sup>56</sup>

Finally, the policy and burden that would be attached to imposing a duty on Shafer under these circumstances would be detrimental. Imposing a duty on individuals, like Shafer, would essentially require all people to lock up anything that could be used as a dangerous weapon while committing a criminal act when there will be a social guest on the premises. This would be true even if the person was not the owner of the dangerous weapon (like Shafer). Liability would be extended far beyond what Michigan law has ever required.

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<sup>54</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 32.

<sup>55</sup> **Exhibit E**, Deposition of William Shafer, pgs. 3-5; **Exhibit D**, Deposition of Mary Shafer, p. 12.

<sup>56</sup> **Appendix 4**, June 19, 2012 Order Granting Summary Disposition to William and Mary Shafer

### **E. Social Host Liability Is Inapplicable**

The majority in *Black v. Shafer*<sup>57</sup> relied on social host liability case law in finding that Shafer owed Plaintiff a heightened duty of care other than the limited duty owed to licensees, stating:

"Defendant's unlawful provision of liquor affected minor plaintiff's ability to recognize and protect herself from any attendant dangers. '[R]estrictions on underage drinking are premised on the idea that the minor must be protected from his own foibles by those that control the supply of alcohol.' *MCA Financial Corp v. Grant Thornton, LLP*, 263 Mich App 152, 163; 687 NW2d 850 (2004). We accordingly reject defendant's argument that he cannot be held to any duty beyond that owed by a premises owner to an ordinary licensee. See *Longstreth v Gensel*, 423 Mich 675, 686; 377 NW2d 804 (1985)('The people of this state (through Const 1963, art 4, § 40), as well as the Legislature [through MCL 436.22] have determined that those under twenty-one years of age should not be sold, given or furnished alcoholic beverages. We believe that this distinction is crucial for the purposes of this appeal.') We decline to adopt defendant's view that the duty of adults who transport minors to a foreign location and provide them with alcohol is limited to that owed to ordinary licensees."

The issue in *Longstreth, supra*, was social host liability based on violation of MCL § 436.33. Social host liability is inapplicable to the case at hand for several reasons. First, Plaintiff's Complaint does not allege any social host liability or any statutory violations by Shafer and does not state a cause of action for social host liability predicated upon violation of the Liquor Control Act. Second, Plaintiff was not injured by her own "foibles". Plaintiff (a minor) was injured by the criminal act of an allegedly intoxicated adult, Gearhart, (who was 21 years old at the time of the incident). Michigan case law is clear that social host liability cannot be based upon furnishing alcohol to an adult. See *Longstreth, supra* at 684, 686; *Ribbens v. Jawahir*, 175 Mich. App. 540, 542, 438 N.W.2d 252 (1998);

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<sup>57</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

*Uplinger v. Howe*, unpublished opinion per curiam of the Court of Appeals issued March 20, 2012 (Docket No. 933752), lv den'd 492 Mich. 867, 819 N.W.2d 881 (2012).<sup>58</sup>

In *Uplinger, supra*, the Court of Appeals considered similar circumstances. A party was hosted at the Grabman residence by Grabman's son, a junior high student. Many of the attendees of the party were under the age of 21 and alcohol was served at the party. *Id.* at \*1. Plaintiff was one of the attendees and was 19 years old at the time. *Id.* Howe and Plaintiff got into an argument and Howe attacked Plaintiff with a baseball bat. *Id.* Howe was convicted of assault with intent to do great bodily harm. *Id.* The Court of Appeals recognized "the ultimate flaw in plaintiff's argument: Howe is over the age of 21 and was over the age of 21 at the time of the party. Social host liability in Michigan cannot be premised on serving alcohol to an adult." *Id.* "Social host liability, predicated upon violation of the Liquor Control Act, does not extend to social hosts who serve alcohol to an adult who subsequently injures a third party as a result of his intoxication." *Id.* at \*2, quoting *Ribbens v. Jawahir*, 175 Mich. App. 540, 542; 438 N.W.2d 252 (1988).

Even if social host liability was applicable in this case (which it is not because Gearhart was an adult), "a social host is under no duty to make a premises safe for a guest other than to warn the guest of concealed defects that are known to the owner and to refrain from wilful and wanton misconduct that injures the guest." *Taylor v. Laban*, 241 Mich App at 455-456; 616 N.W.2d 229 (2000). Further, there is a "criminal acts exception" to social host liability. The Court of Appeals in *Rogalski v. Tavernier*, 208 Mich. App. 302, 307; 527 N.W.2d 73 (1995), held:

"When the Court in *Longstreth* held social hosts liable for the actions of minors to whom they had served alcohol, it did so in the context of alcohol-related automobile accidents. Such accidents are a danger clearly

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<sup>58</sup>

Attached as **Exhibit I**

foreseeable by social hosts. However, criminal or violent acts are not foreseeable results of the serving of alcohol to minors, and therefore, cannot serve as a basis for social host liability.”

It is well established in Michigan that criminal acts by a third-party are normally unforeseeable. See *Graves v. Warner Bros.*, 253, Mich. App. 486, 493; 656 N.W.2d 195 (2002). It is undisputed that the actions of Gearhart constituted criminal activity. Gearhart has plead guilty to negligent discharge of a firearm in relation to the shooting. Although the majority in *Black v. Shafer*<sup>59</sup>, acknowledged that Gearhart committed a crime, they found that “[Shafer’s] potential duty does not arise out of a duty to protect plaintiff from the criminal scheme of a third party, but rather his failure under the facts of this case to safeguard or remove the instrumentality of harm while serving alcohol to a minor.”<sup>60</sup> Shafer did safeguard the shotgun, he checked to make sure that it was not loaded and confirmed there was no round in the chamber.<sup>61</sup> Further, even if Shafer did allow minor Plaintiff to consume alcohol (Shafer testified he was not aware that she was drinking alcohol),<sup>62</sup> her consumption of alcohol had nothing to do with her being shot by 21-year old Gearhart.

Accordingly, when considering all of the factors, it is clear that Shafer did not owe Plaintiff the duty alleged in the Complaint. Most importantly, the incident was unforeseeable, and there was no special relationship between Shafer and Plaintiff that would require a duty to be imposed.

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<sup>59</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>60</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>61</sup> **Exhibit C**, Deposition of Anthony Shafer, p. 32.

<sup>62</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs 31, 41-42

**II. EVEN IF SHAFER DID OWE PLAINTIFF A DUTY, HE DID NOT BREACH SAID DUTY IN ANY WAY.**

Again, in order to make a prima facie case of negligence, the **plaintiff must prove:** (1) that the defendant owed a duty to the plaintiff; **(2) that the defendant breached that duty;** (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages." *Terry v Detroit*, 226 Mich App 418, 424; 573 N.W.2d 348 (1997), *citing Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 203; 544 N.W.2d 727 (1996). (Emphasis added). As discussed above, Shafer did not owe Plaintiff a duty in the current matter. However, even if such a duty was present, Plaintiff cannot prove that Shafer breached any duty.

Plaintiff was merely a social guest (licensee) while on William and Mary Shafer's property. In *Taylor, supra*, the Court of Appeals held that "a social host is under no duty to make a premises safe for a guest other than to warn the guest of concealed defects that are known to the owner and to refrain from wilful and wanton misconduct that injures the guest." *Taylor v. Laban*, 241 Mich App 449, 455-456; 616 N.W.2d 229 (2000).

Shafer did not breach any possible duty owed to Plaintiff as a licensee. First, Shafer did not perform any wilful or wanton misconduct that injured Plaintiff. Shafer was not aware that Plaintiff or any other social guest was even in the house/garage at the time of the accident. In fact, Shafer testified specifically that he did not even realize that the Plaintiff and Gearhart went to the garage because he was down the shoreline swimming by himself.<sup>63</sup> Therefore, he could not have performed wilful or wanton misconduct. Shafer could not prevent the harm to Plaintiff when he was unaware that she was in the garage or that Gearhart was handling the shotgun in a criminal manner.

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<sup>63</sup> Exhibit C, Deposition of Anthony Shafer, p. 35.

In addition, Plaintiff was not injured by a concealed defect on William and Mary Shafer's property. Plaintiff was injured by the negligent/criminal handling of a shotgun by Gearhart. Based on Mr. and Mrs. Shafer's Constitutional rights, it was not a breach of any duty to have a shotgun on their property for home protection. The shotgun was legal and was not required to be licensed with the state. It was also not a concealed defect on the premises. At the time of the shooting, Plaintiff already knew that the gun was on the premises, and saw Gearhart handle the gun earlier in the night after Shafer had checked to make sure the firearm was not loaded.<sup>64</sup> In addition, a shotgun is not a defect on the property. The only danger was the unforeseeable negligent/criminal handling of the shotgun by Gearhart. No reasonable juror could conclude that Shafer breached any limited duty of care he may have owed to Plaintiff as a licensor.

The majority in *Black v. Shafer*<sup>65</sup> held that "a reasonable jury could find that [Shafer's] failure to make the shotgun safe by removing it from the garage, unloading it, putting the safety on, or at a minimum, instructing Gearhart that the gun was loaded and the safety was off, breached his duty of ordinary care to plaintiff."<sup>66</sup> Shafer made the shotgun safe in another manner, he verified that it was not loaded (there were no shells in the chamber).<sup>67</sup> As the trial court correctly found, Gearhart had to load the weapon by

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<sup>64</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs. 32-33

<sup>65</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>66</sup> See **Appendix 1**, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

<sup>67</sup> **Exhibit C**, Deposition of Anthony Shafer, pgs 32-33

racking a shell into the chamber before it could fire.<sup>68</sup> Whether Shafer made the shotgun safe by verifying there were no shells in the chamber, putting the safety on, or even instructing Gearhart that there were shells in the reserve, Gearhart still had to take an affirmative/negligent/criminal action (taking the safety off and/or racking a shell into the chamber) and point the shotgun at Plaintiff in order for the shotgun to fire and strike Plaintiff. Shafer did not breach any duty to Shafer.

### CONCLUSION

The Court of Appeals' holding requires reversal as it is clearly erroneous and conflicts with long-standing Michigan case law providing that (1) criminal acts are unforeseeable by nature and relieve a defendant from liability; (2) bodily harm cannot be foreseen when a person pulls the trigger of what is believed to be an unloaded gun; and (3) a defendant owes no duty to warn or protect a licensee with respect to unforeseeable danger. Additionally, the Court of Appeals' decision essentially creates a new category of special relationships which would vastly expand the circumstances under which a special relationship is found and would allow the consumption of alcoholic beverages to weigh in favor of finding a special relationship. Further, the Court of Appeals decision requires reversal as the policy and burden attached to imposing a duty on defendants, like Shafer, would essentially require all people (including those who do not own the dangerous weapon) to lock up anything that could be used as a dangerous weapon when there is a social guest on the premises. The Court of Appeals' decision would extend liability far beyond what Michigan law has ever required.

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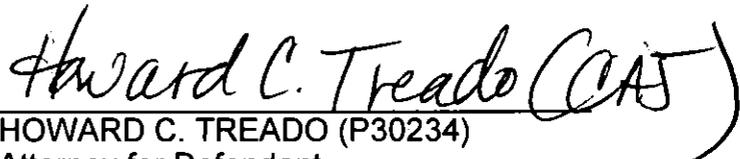
<sup>68</sup> **Appendix 5**, Trial Court Hearing Transcript on Anthony Shafer's Motion for Summary Disposition p. 7-8.

**RELIEF REQUESTED**

Defendant-Appellant Shafer respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals' reversal of the trial court's Order Granting Summary Disposition to Shafer, and reinstate the decision of the trial court granting summary disposition to Anthony Shafer, or, in the alternative, grant leave to appeal.

Respectfully submitted:

**kallas & henk pc**



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