STATE OF MICHIGAN
SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

BONNIE BLACK, Next Friend of JESSICA BITNER, a minor,

Plaintiffs-Appellees,

v.

WILLIAM SHAFER, MARY SHAFER, and IAN GEARHART,

Defendants,

and

ANTHONY SHAFER,

Defendant-Appellant.

Supreme Court Case Number: 149516
COA Case Number:312379
Lower Court Case Number: 11-010645-NO
Honorable Amy P. Hathaway

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DEFENDANT/APPELLANT ANTHONY SHAFER'S BRIEF ON APPEAL

*****ORAL ARGUMENT REQUESTED*****

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STATEMENT REGARDING JURISDICTION

Defendant-Appellant, Anthony Shafer, filed an Application for Leave to Appeal the March 25, 2014 opinion of the Court of Appeals (Docket No. 312379) reversing the Wayne County Circuit Court's Order Granting Summary Disposition to Defendant-Appellant Anthony Shafer.[1]

This Court issued an Order on December 19, 2014, granting Defendant-Appellant's Application for Leave to Appeal, directing the parties to address the following issues: (1) whether this action sounds in ordinary negligence or in premises liability; (2) the role, if any, of licensor-licensee relationships in this action; (3) the specific nature of the duty, if any, owed by Anthony Shafer to the plaintiff's next friend, Jessica Bitner, with respect to Bitner's injury, including whether the parties had a legally significant "special relationship"; (4) whether a reasonable juror could determine that a duty was breached; (5) the import of a third party's criminal act in negligently discharging a firearm; and (6) causation generally.[2]

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[1] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379); See **Appellant's Appendix pgs. 70a - 71a**, Wayne County Circuit Court Order, June 8, 2012 Order Granting Summary Disposition to Anthony Shafer.

[2] See **Appellant's Appendix p. 136a**, Supreme Court Order dated December 19, 2014.

STATEMENT OF QUESTIONS INVOLVED

I. WHERE PLAINTIFF-APPELLEE'S CLAIM IS BASED ON AN INSTRUMENTALITY ON THE PREMISES, DOES THE CLAIM SOUND IN PREMISES LIABILITY?

The Trial Court said:	Did Not Address
The Court of Appeals said:	"No"
Defendant-Appellant says:	"Yes"
Plaintiff-Appellee would say:	"It Sounds in Both Premises Liability and Ordinary Negligence".

II. IS PLAINTIFF-APPELLEE'S STATUS AS A LICENSEE RELEVANT TO WHETHER DEFENDANT-APPELLANT OWES HER A DUTY?

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

III. EVEN IF THE CLAIM SOUNDS IN ORDINARY NEGLIGENCE, DID DEFENDANT-APPELLANT OWE PLAINTIFF-APPELLEE A DUTY TO PROTECT HER FROM THE CRIMINAL ACT OF A THIRD-PARTY WHEN THE PARTIES DID NOT HAVE A LEGALLY SIGNIFICANT "SPECIAL RELATIONSHIP"?

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

IV. EVEN IF DEFENDANT-APPELLANT OWED PLAINTIFF-APPELLEE A DUTY, COULD A REASONABLE JURY FIND THAT DEFENDANT-APPELLANT BREACHED THAT DUTY WHEN HE 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 Trial Court said:	"No"
The Court of Appeals said:	"Yes"
Defendant-Appellant says:	"No"
Plaintiff-Appellee would say:	"Yes"

V. WHERE GEARHART (A THIRD-PARTY) COMMITTED A CRIMINAL ACT IN SHOOTING PLAINTIFF-APPELLEE, IS DEFENDANT-APPELLANT RELIEVED FROM LIABILITY FOR THE CONSEQUENCES OF GEARHART'S CRIMINAL ACT?

The Trial Court said:	Did Not Address

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

VI. WHEN DEFENDANT-APPELLANT VERIFIED THAT THE GUN WAS NOT LOADED AND HOURS LATER A THIRD-PARTY PICKED UP THE GUN (WITHOUT THE KNOWLEDGE OF DEFENDANT-APPELLANT), RACKED A SHELL, AND SHOT PLAINTIFF-APPELLEE, WERE DEFENDANT-APPELLANT'S ACTIONS THE PROXIMATE CAUSE OF PLAINTIFF- APPELLEE'S INJURIES?

The Trial Court said:	Did Not Address
The Court of Appeals said:	Did Not Address
Defendant-Appellant says:	"No"
Plaintiff-Appellee would say:	"Yes"

STANDARD OF REVIEW

A Court's appellate decision regarding a motion for summary disposition is reviewed de novo. *City of Taylor v. Detroit Edison Co.,* 475 Mich 109, 115; 715 N.W.2d 28 (2006); *Smith v. Globe Life Ins Co*, 460 Mich 446, 454; 597 N.W.2d 28 (1999). A party is entitled to summary disposition as a matter of law under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue with respect to any material fact. *Smith, supra.*

INTRODUCTION

Plaintiff-Appellee, 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 had previously checked the gun to make sure that there were no shells in the chamber and had even pulled the trigger to confirm it was not loaded. Shafer was not present in the garage when the incident occurred, was unaware that Gearhart and Plaintiff had returned to the garage, and was unaware that Gearhart was handling the gun. It is undisputed that Gearhart's firing of the gun constituted a criminal act. 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.[3] 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.[4] The Court of Appeals (in a spilt decision) reversed the trial court's decision.[5]

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[3] See **Appellant's Appendix pgs. 41a - 57a**, Shafer's Motion for Summary Disposition.

[4] See **Appellant's Appendix pgs. 70a - 71a**, June 8, 2012 Order Granting Shafer's Motion for Summary Disposition; See **Appellant's Appendix pgs. 61a - 69a**, Trial Court Hearing Transcript for Shafer's Motion for Summary Disposition.

[5] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

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-Appellee, Jessica Bitner ("Plaintiff"), Kayla Warden, Stephanie Sutton, Dustin Gearhart, and Ian Gearhart arrived at William and Mary Shafers' home to go swimming with Anthony Shafer.[6] 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.[7]

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.[8] When the group of four got back to the Shafers' house, it was around midnight.[9] Although Shafer and Gearhart (who were both of legal drinking age) were drinking alcohol, Shafer does not recall Plaintiff or Ms. Sutton

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[6] See **Appellant's Appendix p.13a**, Deposition of Plaintiff Jessica Bitner at p. 27 of transcript.

[7] See **Appellant's Appendix, p. 21a**, Deposition of Anthony Shafer at p. 28 of transcript.

[8] See **Appellant's Appendix, pgs. 10a - 11a**, Deposition of Plaintiff Jessica Bitner at pgs. 7, 9-10 of transcript.

[9] See **Appellant's Appendix p. 16a,** Deposition of Plaintiff Jessica Bitner at p. 39 of transcript.

drinking any alcohol and he did not offer any alcohol to them.[10] While they were all in the garage, Ms. Sutton noticed a shotgun leaning against the wall, in an alcove, between a shelf and a speaker.[11] 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 not loaded.[12] There were no shells in the chamber, and there were only two shells in the gun's magazine/reserve.[13] 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.[14] Gearhart then held and examined the shotgun, and put it back in the spot that it was found.[15] That was the only time that evening that the gun was handled by anyone in the presence of Shafer.[16]

The group of four left the garage and went down to the lake (which was approximately 100 yards away) to swim.[17] 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

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10 See **Appellant's Appendix pgs. 22a, 24a**, Deposition of Anthony Shafer at pgs. 31, 41 of transcript.

11 See **Appellant's Appendix**, **p. 22a**, Deposition of Anthony Shafer at p. 31 of transcript. 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. See **Appellant's Appendix p. 29a**, Deposition of Mary Shafer at pgs. 14-15 of transcript; See **Appellant's Appendix p. 35a - 36a**, Deposition of William Shafer at pgs. 22-23, 39.

12 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

13 See **Appellant's Appendix p.22a**, Deposition of Anthony Shafer at pgs. 32-33 of transcript.

14 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

15 See **Appellant's Appendix p.22a,** Deposition of Anthony Shafer at pgs. 32-33 of transcript.

16 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at pgs.32-33 of transcript.

17 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 33 of transcript.

down by the water.[18] Shafer did not even realize that the other two had went to the garage because he was down the shoreline swimming by himself.[19] Plaintiff changed back into her clothes once she got back into the garage with Gearhart.[20] At that time, Plaintiff noticed that Gearhart was holding the shotgun in his hand. Gearhart walked behind Plaintiff, while holding the shotgun. Plaintiff then heard the shotgun go off, and it hit her in the back of the left leg near the ankle.[21]

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.[22] 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.[23]

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;

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[18] See **Appellant's Appendix p. 17a**, Deposition of Plaintiff Jessica Bitner at pgs. 46-47 of transcript.

[19] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at p. 35 of transcript.

[20] See **Appellant's Appendix pgs. 9a - 18a**, Deposition of Plaintiff Jessica Bitner, p. 47.

[21] See **Appellant's Appendix pgs. 9a - 18a**, Deposition of Plaintiff Jessica Bitner, p. 55.

[22] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at p. 35 of transcript.

[23] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at pgs. 34-36 of transcript.

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 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.[24] 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.[25]

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.[26] On June 8, 2012, the trial court entered an Order Granting Shafer's Motion for Summary Disposition.[27] 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

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[24] See **Appellant's Appendix pgs. 72a - 73a**, Wayne County Circuit Court Order, June 19, 2012 Order Granting Summary Disposition to William and Mary Shafer.

[25] See **Appellant's Appendix p. 33a**, Deposition of William Shafer at pgs. 3-5 of transcript; See **Appellant's Appendix pgs. 28a**, Deposition of Mary Shafer at p.12 of transcript.

[26] See **Appellant's Appendix pgs. 41a - 57a**, Shafer's Motion for Summary Disposition.

[27] See **Appellant's Appendix pgs. 70a - 71a**, Wayne County Circuit Court Order, June 8, 2012 Order Granting Shafer's Motion for Summary Disposition.

unforeseeable that Gearhart would pick up the gun, rack a shell into the chamber and then discharge it.[28]

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 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.[29]

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.[30]

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

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[28] See **Appellant's Appendix pgs. 70a - 71a**, Wayne County Circuit Court Order, June 8, 2012 Order Granting Shafer's Motion for Summary Disposition; See **Appellant's Appendix pgs. 61a - 69a**, Trial Court Hearing Transcript for Shafer's Motion for Summary Disposition.

[29] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

[30] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), Dissenting Opinion.

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.[31] On May 12, 2014, the Court of Appeals denied Shafer's Motion for Reconsideration.[32]

On June 20, 2014, Shafer filed an Application for Leave to Appeal the March 25, 2014 opinion of the Michigan Court of Appeals reversing the trial court's granting of Shafer's Motion for Summary Disposition.[33] On December 19, 2014, this Court granted Shafer's Application for Leave to Appeal and requested that the parties address: (1) whether this action sounds in ordinary negligence or in premises liability; (2) the role, if any, of licensor-licensee relationships in this action; (3) the specific nature of the duty, if any, owed by Shafer to Plaintiff with respect to her injury, including whether the parties had a legally significant "special relationship"; (4) whether a reasonable juror could determine that a duty was breached; (5) the import of a third party's criminal act in negligently discharging a firearm; and (6) causation generally.[34] Each of these issues is addressed below.

ARGUMENT

I. This is a Premises Liability Case

Plaintiff's claim sounds in premises liability, not ordinary negligence. Plaintiff's claim is based on a condition/instrumentality on the premises. "When an injury develops from a condition on the land, rather than emanating from an activity or conduct that created the

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31 See **Appellant's Appendix pgs. 89a - 99a**, Shafer's Motion for Reconsideration.

32 See **Appellant's Appendix p. 100a,** Court of Appeals Order, May 12, 2014 Order Denying Motion for Reconsideration. Honorable Jansen would grant the Motion for Reconsideration.

33 See **Appellant's Appendix pgs. 105a - 135a**, Shafer's Application for Leave to Appeal to Supreme Court.

34 See **Appellant's Appendix p. 136a**, December 19, 2014 Order of the Supreme Court Granting Application for Leave to Appeal.

condition on the property, the action sounds in premises liability." *Woodman v. Kera, LLC*, 280 Mich. App. 125, 153; 760 N.W.2d 641 (2008). The Court of Appeals has recognized that premises liability "extends to instrumentalities on the premises". *Eason v. Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich. App. 261, 264; 532 N.W.2d 882 (1995). "If the plaintiff's injury arose from an allegedly dangerous condition on the land, the action sounds in premises liability rather than ordinary negligence; this is true even when the plaintiff alleges that the premises possessor created the condition giving rise to the plaintiff's injury." *Buhalis v. Trinity Continuing Care Servs.*, 296 Mich. App. 685, 692; 822 N.W.2d 254 (2012).

The majority of the Court of Appeals in this action, *Black v. Shafer*[35], 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".[36] 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…".[37] 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;

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[35] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

[36] See **Appellant's Appendix pgs. 58a - 60a**, Plaintiff's Response to Defendant's Motion for Summary Disposition at pgs. 3, 5, 10.

[37] See **Appellant's Appendix p. 60a**, Plaintiff's Response to Defendant's Motion for Summary Disposition.

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;

Michigan Courts have found cases which allege injuries from instrumentalities on the premises sound in premises liability. In *Cuolahan v. Stamper,* unpublished opinion per curiam of the Court of Appeals, issued Nov. 9, 2004 (Docket No. 249244)[38], Ludwig, believing his shotgun was unloaded, aimed it at Nicholas and pulled the trigger, in an attempt to scare him as a joke. However, the gun was actually loaded and Nicholas was fatally shot. *Id*. At the time of the incident, Ludwig and Nicholas were both residing in the defendant's home. *Id*. The Court of Appeals found that the plaintiff's complaint "asserted a claim against defendant based on a **premises liability theory** framed in terms of defendant's failure to protect Nicholas from Ludwig." *Id*. (Emphasis added).

In *Campbell v. Kovich*, 273 Mich. App. 227, 232; 731 N.W.2d 112 (2007), the plaintiff was injured when she was struck in the eye by an unknown object that was ejected from a lawnmower. The plaintiff argued that the trial court erred in granting summary disposition of the premises liability claims against the property owners because there was evidence of independent acts of negligence. The Court of Appeals, in affirming summary disposition, found that the plaintiff was a licensee and found that she did not present any evidence of independent acts of negligence by defendants that had any causal connection to the accident.

In the instant case, Plaintiff's claim is also based on a condition/instrumentality on the premises, i.e. a firearm. Plaintiff's complaint sounds in premises liability and Plaintiff

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[38] See **Appellant's Appendix pgs. 7a - 8a**, *Cuolahan v. Stamper* Opinion.

concedes she has alleged a premises liability claim. Because this is a premises liability case, it is necessary to consider Plaintiff's status as a social guest on the property.

II. Plaintiff Was A Licensee

Plaintiff's status as a licensee is relevant to the question of whether Shafer owed Plaintiff a duty. The dissenting opinion of the Court of Appeals in this action, *Black v. Shafer*[39], 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,*[40] dissenting opinion, citing *D'Ambrosio v. McCready*, 225 Mich. App. 90, 94; 570 N.W.2d 797 (1997).

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.

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,*[41] dissenting

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39 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

40 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

41 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No.

opinion, citing *Stabnick v. Williams Patrol Service*, 151 Mich. App. 331, 334-335; 390 N.W.2d 657 (1986) (emphasis added). "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Campbell v. Kovich*, 273 Mich. App. 227, 236; 731 N.W.2d 112 (2007) citing *Stitt v. Holland Abundant Life Fellowship,* 462 Mich. 591, 596; 614 N.W.2d 88 (2000).

In *Campbell, supra*, the Plaintiff was injured when she was struck in the eye by an unknown object that was ejected from a lawn mower. *Id*. at 229. The Court of Appeals found that Plaintiff was not injured by a hidden danger, "but by a danger the licensee had reason to know of: the lawn mower. The lawn mower was not hidden." *Id.* at 236. The plaintiff "admitted that she was aware that lawn mowers can run over and eject objects". *Id*.

Likewise, Plaintiff, in the instant case, was not injured by a hidden danger, but by the gun, which was not hidden. Plaintiff had knowledge of the gun because she was in the garage when Gearhart first picked up the gun and when Shafer made sure the gun was not loaded.[42] Plaintiff admits that she was a social guest and licensee on the premises. As the dissent of the Court of Appeals in the instant case, *Black v. Shafer*[43], notes, "[i]t cannot be seriously disputed that [Plaintiff] was aware of any danger posed by the shotgun, which was plainly leaning against the wall of the garage for anyone to see." Further, as set forth

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312379).

[42] See **Appellant's Appendix**, **p. 22a**, Deposition of Anthony Shafer at pgs. 31-32 of transcript.

[43] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), Dissenting opinion.

below, 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 and has no duty to warn Plaintiff of dangers of which she is aware. Finally, Shafer owed no duty of care to make the premises safe for Plaintiff's visit. See *Stitt, supra; Campbell, supra*.

III. Shafer Did Not Owe Plaintiff a Duty

Regardless of whether this action is classified as a negligence claim or a premises liability claim, Shafer did not owe Plaintiff any duty under the facts of this case. 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." *Buczkowski v. McKay*, 441 Mich 96; 490 N.W2d 330 (1992), *citing Friedman v Dozorc*, 412 Mich 1, 22; 312 N.W2d 585 (1981); *Prosser & Keeten, Torts* (5th 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." *Buczkowski*, *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). "Generally, an individual has no duty to protect another who is endangered by a third person's conduct." *Murdock v. Higgins*, 454 Mich. 46, 55; 559 N.W.2d 639 (1997).

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).

The essence of all of Plaintiff's allegations against Shafer is that he breached a duty to prevent Plaintiff's injuries (which were caused by a third-party's criminal act). Shafer had no duty to provide protection against crime. See generally, *Holland v. Delaware McDonald's Corp.*, 171 Mich. App. 707; 430 N.W.2d 766 (1988). 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 *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 known by all of the occupants of the home. The decedent's boyfriend retrieved the revolver and shot and killed plaintiff's decedent. The Court of Appeals noted that "[p]laintiff presents essentially only one argument on appeal --that the foreseeability that felons may misuse firearms, recognized by both Michigan and federal law, creates a duty to take reasonable steps to prevent a loaded firearm from being accessible to a known felon." *Id*. at 418. The Court of Appeals noted that "[w]hether an individual gun owner who leaves a weapon in a location accessible to a felon may be held civilly liable for the convicted felon's misuse of the weapon appears to be an issue of first impression in Michigan." *Id*. 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 noted that this matter concerns only how defendant kept or stored his gun. *Id*. at 422. The Court of Appeals 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.

If a gun owner owes no duty to secure his gun or store it in a location where it cannot be accessed by a known felon residing in the house, then it defies logic to find a non-owner [Shafer] liable for storing an unloaded gun in an area which may be accessible to a social guest with no known violent history.

In *Bridges v. Parrish*, 731 S.E.2d 262 (N.C. App. 2012)[44], the Court of Appeals of North Carolina recently considered a negligence action brought by a shooting victim against the parents of the shooter (who owned the gun used in the shooting). The plaintiff alleged that defendants were aware of their adult son's criminal history and violent behavior toward women and did not inform the plaintiff [his girlfriend] of the same prior to the shooting. The defendant's son [Bernie] accused the plaintiff of seeing other men and shot her in the stomach. The plaintiff alleged that defendants owed her a legal duty because: "(1) defendants engaged in an active course of conduct that created a foreseeable risk of harm to plaintiff; (2) defendants negligently failed to secure their firearms from Bernie; and (3) defendants negligently entrusted Bernie with the handgun and truck." *Id*. at 264-265.

The *Bridges* Court held that plaintiff failed to "establish how her harm was the reasonably foreseeable result of defendants' conduct of assisting Bernie, downplaying his violent behavior, or saying that he posed no threat." *Id*. at 266. The "complaint does not indicate that defendants were 'on notice', or in any way aware that their conduct would cause Bernie to act violently. Therefore, we cannot hold that defendants had the duty to guard against such an unforeseeable result of their actions." *Id.* The Court also found that defendants had no duty to secure their firearms from their son. *Bridges, supra* at 266. Despite the plaintiff's allegations that defendants were aware prior to the incident that Bernie had possession of the handgun and failed to take reasonable steps to remove the handgun from his possession and control, the Court held that plaintiff failed to allege that defendants expressly or impliedly consented to the use of the handgun. *Id*. at 268. The

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[44] See **Appellant's Appendix pgs. 74a - 82a**, *Bridges v. Parrish*, 731 S.E.2d 262 (N.C. App. 2012).

Court also held that defendants could not have reasonably foreseen that his possession of the gun would cause the plaintiff's harm. *Id*.

In the instant case, Shafer had no notice that Gearhart had returned to the garage with Plaintiff and did not consent to Gearhart's "use" of the gun.[45] Even if Shafer knew that Gearhart had possession of the gun immediately before he shot Plaintiff (he had no such notice), Shafer could not have foreseen that Gearhart's possession of the gun would cause Plaintiff's harm. Shafer had previously verified that the gun was unloaded and even pulled the trigger to confirm the same.[46] It was unforeseeable that an unloaded gun would fire a bullet.

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.[47] 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.[48] In Michigan, it is well-established that third-party criminal acts

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[45] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at p. 35 of transcript.

[46] See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

[47] See **Appellant's Appendix p. 18a**, Deposition of Plaintiff Jessica Bitner at p. 55 of transcript; See **Appellant's Appendix pgs. 20a, 25a**, Deposition of Anthony Shafer at pgs.16, 47 of transcript.

[48] 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." See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379); See **Appellant's Appendix pgs. 101a - 102a**, Offender Tracking Information System search for Ian Gearhart; See **Appellant's Appendix pgs. 103a - 104a**, 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.[49]

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. It was unforeseeable that Gearhart would shoot Plaintiff.

In *Cuolahan v. Stamper*, unpublished opinion per curiam of the Court of Appeals, issued Nov. 9, 2004 (Docket No. 249244)[50], Ludwig, believing his shotgun was unloaded, aimed it at Nicholas and pulled the trigger, in an attempt to scare him as a joke. However, the gun was actually loaded and Nicholas was fatally shot. *Id.* The plaintiff brought an action against defendant (the owner of the home) alleging he failed to protect Nicholas from Ludwig. The Court of Appeals found that:

> "The evidence showed that Nicholas had been present on at least one prior occasion where Ludwig had been playing with the gun pretending to shoot people and was aware of this proclivity. And despite the fact that Ludwig had been playing with the gun in the moments before approaching Nicholas, Ludwig's act of shooting Nicholas was not foreseeable. Ludwig had brought the gun out on previous occasions without incident and there was no reason

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[49] See **Appellant's Appendix p. 33a**, Deposition of William Shafer at pgs. 3-5 of transcript; See **Appellant's Appendix p. 28a**, Deposition of Mary Shafer at p.12 of transcript.

[50] See **Appellant's Appendix pgs. 7a - 8a**, *Cuolahan v. Stamper* Opinion.

> for defendant to foresee that the gun was actually loaded. Accordingly, the trial court erred in denying defendant's motion for summary disposition." *Id.*

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.[51] He first noticed that Plaintiff and Gearhart were not down by the lake when he heard Plaintiff scream.[52] Shafer could not foresee the criminal handling of the firearm by Gearhart.

Further, Shafer could not have foreseen the resulting gunshot. As Honorable Jansen recognized in the dissenting opinion in *Black v. Shafer*[53], 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. McCarn*, 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.[54] 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.

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[51] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at pgs. 34-35 of transcript.

[52] See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at pgs. 34-35 of transcript.

[53] See **Appellant's Appendix 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), Dissenting opinion.

[54] See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

Shafer could not foresee that hours later 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 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*.[55] Plaintiff did not anticipate Gearhart would shoot her when Gearhart was handling the shotgun in the garage.[56] 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. Shafer could not have reasonably anticipated Gearhart's conduct hours after Gearhart had looked at the gun. Unbeknown to Shafer, Gearhart and Plaintiff returned to the garage. Unbeknown to Shafer, Gearhart picked up the gun. Unbeknown to Shafer, Gearhart racked a shell. Unbeknown to Shafer, Gearhart carried out a criminal act by shooting the Plaintiff. The criminal acts of Gearhart were not foreseeable. Further, because there were no shells in the gun's chamber, Shafer could not have foreseen the resulting gunshot. When Shafer checked to make sure that the gun was not loaded and when the gun was put back in the alcove, it was simply not foreseeable that anything approximating this chain of events would occur. To extrapolate that because Gearhart looked at the gun it was foreseeable on Shafer's part that Gearhart would later shoot Plaintiff under circumstances of which Shafer had no knowledge, would impose an extraordinarily broad legal duty on Shafer.

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[55] See **Appellant's Appendix pgs. 10a - 11a**, Deposition of Plaintiff Jessica Bitner at pgs. 7, 9-11 of transcript.

[56] See **Appellant's Appendix p. 18a**, Deposition of Plaintiff Jessica Bitner at p. 55 of transcript.

B. There Was No Special Relationship

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 further the argument that Shafer did not owe Plaintiff a duty. The second factor is whether there is an existence of a relationship between the parties involved. *Buczkowski*, *supra* at 104.

"Where there is a duty to protect an individual from a harm by a third person, that duty to exercise reasonable care arises from a 'special relationship' either between the defendant and the victim, or the defendant and the third party who caused the injury." *Murdock v. Higgins*, 454 Mich 46, 55; 559 N.W.2d 639 (1997). "Such a relationship must be sufficiently strong to require a defendant to take action to benefit the injured party." *Id.* 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 *Buczkowski*, *supra; Krass*, *supra*; *See also Dykema v. Gus Macker Enterprises, Inc.,* 196 Mich. App. 6, 8; 492 N.W.2d 472 (1992). (Emphasis added). The Court of Appeals has rejected "the premise that a family relationship is sufficient to impose a duty". *Bell & Hudson, P.C. v. Buhl Realty Co.*, 185 Mich. App. 714, 718-719; 462 N.W.2d 851 (1990).

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. 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). Because Plaintiff was merely a licensee on the property (See Argument II above),

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 of the Court of Appeals in the instant case, *Black v. Shafer*[57], 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*[58], 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, a

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[57] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

[58] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

special relationship would exist if Plaintiff had entrusted herself to the protection and control of Shafer and, in doing so, lost the ability to protect herself. See *Dykema, supra*; *Williams, supra*. In *Dykema, supra*, the Court of Appeals considered whether an organizer of an outdoor event had a duty to warn a spectator of approaching severe weather. In finding that no special relationship existed between the plaintiff and defendant, the Court of Appeals noted that the plaintiff did not entrust himself to the control and protection of defendant with a consequent loss of control to protect himself. The plaintiff was free to leave the tournament at anytime, he was able to see the changing weather conditions by looking at the sky, and he was able to seek shelter. *Dykema, supra* at 10. In *Bridges v. Parrish*, *supra*[59], the plaintiff argued that the defendants were liable for failing to prevent a shooting due to a "special relationship" existing between the defendants and their son. *Id*. at fn 1. However, the Court found that assuming that the plaintiff had argued a special relationship, her argument "is without merit because defendants lacked the control necessary to create a special relationship." *Id*.

Likewise, in the instant case, Shafer lacked the control necessary to create a special relationship. Further, Plaintiff "was not unable to protect herself".[60] Any argument that because Plaintiff was 16-years old she was unable to appreciate the potential danger is unavailing. A 16-year old in Michigan is considered of age to consent to sexual relations, drive a vehicle, and appreciate the dangers associated with these activities. Clearly, she was able to appreciate the potential danger associated with a firearm. She could have left

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[59] See **Appellant's Appendix pgs. 74a - 82a**, *Bridges v. Parrish*, 731 S.E.2d 262 (N.C. App. 2012).

[60] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379, Dissenting opinion.

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 and therefore, Shafer owed Plaintiff no duty. Likewise, there was no special relationship between Shafer and Gearhart (who was also a social guest). In general, there is no legal duty obligating one person or entity to aid or protect another. *Krass*, *supra* at 667-668. Plaintiff did not allege that Shafer possessed a special ability to control the criminal acts of Gearhart. Plaintiff failed to establish a special relationship between Shafer and Gearhart, or Shafer and Plaintiff, which would obligate Shafer to protect Plaintiff from Gearhart's criminal act.

C. 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,"[61] 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 gone back 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 near the house after Plaintiff had been shot due to Gearhart's criminal conduct.[62]

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61 See *Graves, supra*, at 492-493.

62 See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at pgs. 34-36 of transcript.

Without knowing the licensees went to the garage alone, there was not even a consideration that there could be an injury.[63] Shafer could not be certain of Plaintiff being shot when he thought they were nowhere 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.

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 garage unaccompanied by Shafer, and Gearhart shot Plaintiff. Shafer had previously checked to confirm that the firearm was not loaded.[64] **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.[65] 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.[66]

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

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63 See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at p. 35 of transcript.

64 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

65 See **Appellant's Appendix p. 33a**, Deposition of William Shafer at pgs. 3-5 of transcript; See **Appellant's Appendix p. 28a**, Deposition of Mary Shafer at p.12 of transcript.

66 See **Appellant's Appendix pgs. 72a - 73a**, Wayne County Circuit Court Order, June 19, 2012 Order Granting Summary Disposition to William and Mary Shafer

weapon (like Shafer). Liability would be extended far beyond what Michigan law has ever required.

D. Social Host Liability Is Inapplicable

The majority of the Court of Appeals in this case, *Black v. Shafer*[67], 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*

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[67] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

at 684, 686; *Ribbens v. Jawahir*, 175 Mich. App. 540, 542, 438 N.W.2d 252 (1998); *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).[68] Third, even if Plaintiff had consumed some alcohol, her consumption of alcohol has absolutely nothing to do with the subject incident.

In *Uplinger, supra*[69], 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

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[68] See **Appellant's Appendix, pgs. 37a - 40a,***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).

[69] See **Appellant's Appendix, pgs. 37a - 40a**, *Uplinger v. Howe* Opinion.

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 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 of the Court of Appeals in the instant case, *Black v. Shafer*[70], 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."[71] Shafer did safeguard the shotgun, he checked to make sure that it was not loaded and confirmed there was no round in the chamber.[72] Further, even if Shafer did allow minor Plaintiff to consume alcohol (Shafer testified he was not aware

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[70] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

[71] See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

[72] See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at p. 32 of transcript.

that she was drinking alcohol),[73] 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.

IV. 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

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[73] See **Appellant's Appendix pgs. 22a, 24a**, Deposition of Anthony Shafer at pgs. 31, 41 of transcript.

aware that Plaintiff or any other social guest was even in the house/garage at the time of the accident. In fact, Shafer specifically testified that he did not even realize that the Plaintiff and Gearhart went to the garage because he was down the shoreline swimming by himself.[74] 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.

In addition, Plaintiff was not injured by a hidden danger on William and Mary Shafer's property. The gun was not hidden and Plaintiff had knowledge of it. 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.[75] As the dissent in *Black v. Shafer*[76] notes, "[i]t cannot be seriously disputed that [Plaintiff] was aware of any danger posed by the shotgun, which was plainly leaning against the wall of the garage for anyone to see." 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. 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.

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74 See **Appellant's Appendix p. 23a**, Deposition of Anthony Shafer at p. 35 of transcript.

75 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at pgs. 32-33 of transcript.

76 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379), dissenting opinion.

The majority of the Court of Appeals in the instant case, *Black v. Shafer*[77], 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."[78] Shafer made the shotgun safe in another manner, he verified that it was not loaded (there were no shells in the chamber).[79] As the trial court correctly found, Gearhart had to load the weapon by racking a shell into the chamber before it could fire.[80] 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.

V. Liability for Gearhart's Criminal Act in Discharging a Firearm Rests with Gearhart

As set forth above in Sections III and IV, Gearhart's criminal act of discharging the firearm is relevant to a determination of whether Shafer owed Plaintiff a duty and whether Shafer breached any duty owed to Plaintiff. In Michigan, it is well-established that third-party criminal acts are unforeseeable by nature, and they relieve a defendant property

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77 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

78 See **Appellant's Appendix pgs. 83a - 88a**, Court of Appeals Opinion, *Black v. Shafer*, unpublished opinion per curiam of the Court of Appeals, issued March 25, 2014 (Docket No. 312379).

79 See **Appellant's Appendix p. 22a**, Deposition of Anthony Shafer at pgs. 32-33 of transcript.

80 See **Appellant's Appendix pgs. 67a - 68a**, Trial Court Hearing Transcript on Anthony Shafer's Motion for Summary Disposition.

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).

There is no dispute that Gearhart's act of discharging the firearm was a criminal act. Gearhart has plead guilty to negligent discharge of a firearm in relation to the shooting. MCL 752.861 provides:

> "any person who, because of carelessness, recklessness or negligence, but not willfully or wantonly, shall cause or allow any firearm under his immediate control, to be discharged so as to kill or injure another person, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison for not more than 2 years, or by a fine of not more than $2,000.00, or by imprisonment in the county jail for not more than 1 year, in the discretion of the court."

Property owners are not even required to insure the safety of invitees in cases of criminal conduct. "Public policy does not require an owner or occupier of land to act as a insurer of his or her invitees in cases of criminal conduct." *Holland v. Delaware McDonald's Corp.*, 171 Mich. App. 707, 430 N.W.2d 766 (1988). In this case, Plaintiff was only a licensee. 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). "The rationale underlying this general rule is the fact that '[c]riminal activity, by its deviant nature, is normally unforeseeable." *Graves, supra* at 492. " '[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.'" *Graves, supra* at 492. As set forth in detail above, there was no legally significant special relationship between Shafer and Plaintiff, or Shafer and

Gearhart. Shafer had no reason to expect that Gearhart would not obey the criminal law and Shafer is relieved from any liability by virtue of Gearhart's criminal act. While an unfortunate incident, it was Gearhart, not Shafer, who was responsible for the incident and who must be held accountable.

VI. Shafer's Actions Were Not the Proximate Cause of Plaintiff's Injuries

Because, as set forth above, Shafer owed no duty to Plaintiff, there is no need to discuss proximate cause. However, even if Shafer owed Plaintiff a duty and breached that duty (he did not), he cannot be liable as his actions were not the proximate cause of Plaintiff's injuries.

> " 'Proximate Cause' is a legal term of art that incorporates both cause in fact and legal (or 'proximate') cause. *Craig v. Oakwood Hosp.*, 471 Mich. 67, 86; 684 N.W.2d 296 (2004). Causation in fact requires a but-for standard. *Wilkinson v. Lee*, 463 Mich. 388, 396-397, 617 N.W.2d 305 (2000). In other words, it requires a showing that, but for the negligent conduct, the injury would not have occurred. *Wiley v. Henry Ford Cottage Hosp.*, 257 Mich. App. 488, 496; 668 N.W2d 402 (2003). Proximate cause 'normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.' *Skinner v. Square D Co.*, 445 Mich. 153, 163; 516 N.W.2d 475 (1994). Cause in fact requires more than a possibility of causation; while the evidence need not negate all other possible causes, it must exclude other reasonable hypotheses with a fair amount of certainty. *Craig, supra* at 87-88, 684 N.W.2d 296." *Campbell v. Kovich*, 273 Mich. App. 227, 232-233; 731 N.W.2d 112 (2007).

"Causation in fact includes more than a simple 'but for' relationship between the negligent act and the damage. The negligence must also be a 'substantial factor' in producing the injury. *Brisboy v. Fibreboard Corp*, 429 Mich. 540, 547-548; 418 N.W.2d 650 (1988)." *Derbeck v. Ward*, 178 Mich. App. 38, 44; 443 N.W.2d 812 (1989). "In *Weissert v. City of Escanaba*, 298 Mich. 443, 452; 299 N.W.2d 139 (1941), this Court defined "proximate cause" as "that which in a natural and continuous sequence, unbroken by any

new, independent cause, produces the injury, without which such injury would not have occurred. . . ." *McMillian v. Vilet*, 422 Mich. 570, 576; 374 N.W.2d 679 (1985).

> "An "intervening cause" is defined in 2 Restatement Torts, § 441, p.465 as "one which actively operates in producing harm to another after the actor's negligent act or omission has been committed." An intervening cause breaks the chain of causation and constitutes a superseding cause which relieves the original actor of liability, unless it is found that the intervening act was "reasonably foreseeable." See *e.g., Moning v. Alfono*, 400 Mich. 425, 442; 254 N.W.2d 759 (1977). *McMillian, supra.*

An intervening cause situation "involves an intervening cause or act which begins operating 'after the actor's negligent act or omission has been committed.' " *McMillian, supra* at 577. "There is no need for discussing proximate cause in a case where the negligence of the defendant is not established . . .". *McMillian, supra* at 577. "The questions of duty and proximate cause are interrelated because . . .both depend in part on foreseeability." *Moning, supra* at 439.

> "Once a jury or judge has found that the defendant was negligent and that the plaintiff suffered injuries, it must be determined, whether the plaintiff's injuries were caused by the defendant's wrongful conduct, and, then, if the defendant did cause the injuries, judge whether the plaintiff's injuries were too insignificantly related to or too remotely effected by the defendant's negligence." *Davis v. Thornton*, 384 Mich. 138, 145; 180 N.W.2d 11 (1970).

Plaintiff alleges that Shafer was negligent in failing to secure the firearm. While this is unsupported by the facts as Shafer checked the gun to make sure that it was not loaded and even pulled the trigger to confirm the same, even if it was found that Shafer owed a duty to secure the firearm and breached that duty (he did not), Shafer's actions were not the cause of Plaintiff's injuries. Had the unloaded gun remained in the alcove after Shafer verified that it was not loaded, Plaintiff would have never been injured. Shafer's action was not so significant or integral to the shooting that it could be regarded as a proximate cause. Gearhart's actions in returning to the garage hours later with Plaintiff (without the knowledge of Shafer), picking up the gun, racking a shell, and pointing the gun toward

Plaintiff constitute an intervening superseding cause which relieves Shafer from liability. As set forth above, Gearhart's actions were unforeseeable and it was unforeseeable that an unloaded gun would fire a bullet. But for Gearhart's conduct in picking up the gun, racking a shell, and pulling the trigger, Plaintiff would not have been injured. Gearhart's conduct was the proximate cause of this incident, not Shafer's.

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. While an unfortunate incident, it was Gearhart, not Shafer, who was responsible for the incident and who must be held accountable.

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.

Respectfully submitted:

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Dated: February 9, 2015

STATE OF MICHIGAN
SUPREME COURT

BONNIE BLACK, Next Friend of JESSICA BITNER, a minor,

Plaintiffs-Appellees,

v.

ANTHONY SHAFER,

Defendant-Appellant.

Supreme Court Case Number:
COA Case Number:312379
Lower Court Case Number: 11-010645-NO
Honorable Amy P. Hathaway

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PROOF OF SERVICE

The undersigned certifies that on February 9, 2015, she did serve **Defendant/Appellant Anthony Shafer's Brief on Appeal, Appellant Anthony Shafer's Appendix**, and this **Proof of Service** upon:

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via e-mail, on this Michigan Supreme Court website for e-filing. I declare under the penalty of perjury that the statement above is true to the best of my information, knowledge, and belief.

/S/ Tricia C. DiNicolantonio