IN THE SUPREME COURT OF MISSISSIPPI

NO. 2011-CA-00375-SCT

NYDREEKA WILLIAMS, BY AND THROUGH HER MOTHER AND NEXT FRIEND, THERESA RAYMOND, AND THERESA RAYMOND, AS ADMINISTRATOR OF THE ESTATE OF ROBERT EARL WILLIAMS, DECEASED

v.

WAL-MART STORES EAST, L.P., AND MARTHA PARKER

DATE OF JUDGMENT:	01/19/2011
TRIAL JUDGE:	HON. W. ASHLEY HINES
COURT FROM WHICH APPEALED:	SUNFLOWER COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CYNTHIA I. MITCHELL ALMA WALLS
ATTORNEY FOR APPELLEES:	LAWRENCE D. WADE
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
DISPOSITION:	AFFIRMED - 09/06/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

WALLER, CHIEF JUSTICE, FOR THE COURT:

¶1. Twenty-year-old Xavier Zurndell Moore pleaded guilty to manslaughter for the shooting death of his mother's live-in boyfriend, Robert Williams. The fatal bullet had been purchased from the Walmart in Indianola, Mississippi. Robert's daughter and his estate filed a wrongful-death suit against Walmart, alleging that it unlawfully had sold ammunition to the underage Moore and that the sale proximately had caused Robert's death. The trial court

granted summary judgment for Walmart based on this Court's decision in ***Robinson v. Howard Brothers of Jackson, Mississippi***, 372 So. 2d 1074 (Miss. 1979). In that case, this Court held that, even though the store had violated federal law by selling a firearm and ammunition to a minor, the minor's subsequent murder of a third party had not been foreseeable; the seller, therefore, was not civilly liable for the death. ***Id***. at 1076. Based on ***Robinson***, we find that Moore's criminal act was not foreseeable and that Walmart reasonably could assume that Moore would follow the law. Therefore, we affirm summary judgment in favor of Walmart.

FACTS

¶2. On January 19, 2006, twenty-year-old Xavier Zurndell Moore and his coworker, Ladarius White (a.k.a. Smurf), entered Walmart in Indianola, Mississippi, to purchase clothes and other items. While there, Moore remembered that he needed more bullets for a handgun that he had purchased recently. So Moore entered the sporting goods department and approached Martha Parker, who was working behind the sales counter that day. Moore asked Martha if she had any bullets for a .45-caliber Smith and Wesson handgun. What happened next is disputed.

¶3. Martha asserted that her coworker, Terrence Parker, asked Moore if he wanted the Remington or Winchester brand. She said that Moore said nothing and simply walked away. Moments later, White approached the sales counter and asked Martha if she had any bullets for a .45-caliber handgun. Martha said that she then asked for and received White's driver's license. The license showed that White was more than twenty-one years old; thus, Martha entered White's date of birth into the computer, returned his driver's license to him, and sold

him the bullets. Martha acknowledged that she had discerned that Moore and White were together. Further, she noticed that Moore had provided White the money for the transaction.

¶4. Moore's recollection was different. He affirmed that he first asked Martha whether she had any bullets for a .45-caliber Smith and Wesson. He then asked her how much the bullets cost, and she told him the price. Moore said that he informed Martha that he wanted to purchase the bullets, and she began to process the sale. He specifically recalled Martha asking to see his driver's license; he responded by telling her that he did not have it with him. Moore then asked Martha if White, who was browsing in a nearby aisle, could purchase the bullets for him. Martha told Moore that White could do so if White had his identification. Moore then handed White some money, and Martha completed the sale to White. After the purchase, White handed Moore the change and the bullets, and the two of them walked away.

¶5. The next evening, Moore and his then-girlfriend, Barbara Williams, attended a high school basketball game. After the game, they stopped to eat, watched television, and drank a little more than half of a fifth of vodka.[1] They then spent the night at the Bayou Apartment complex where Moore lived with his sister, his mother, and his mother's live-in boyfriend, Robert Williams.[2] In the early morning hours, Moore and Barbara were awakened when Robert began knocking on Moore's bedroom door. Robert demanded that Moore return a box fan he had borrowed. Moore and Barbara slowly got dressed; meanwhile, Robert grew

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[1] Notably, Moore's deposition testimony provided that earlier in the day he had purchased "green apple vodka from a liquor store . . . where I cash my check at." Moore noted that identification was not requested by the liquor store cashier, despite the fact that Moore was under twenty-one years old.

[2] Barbara Williams and Robert Williams are not related.

increasingly impatient and began pounding harder on the door. A heated exchange ensued between Robert and Moore. According to Moore, Robert threatened that "when I opened the door he had something for my little a** . . . ." Moore stated that he feared Robert was going to be physically violent.[3] Moore then got his preloaded handgun from the closet[4] and fired a single shot at the door. Moore maintained that he had aimed about seven or eight feet high and that he had intended only to scare Robert away. "I tried to fire up at an angle but never pointing the gun at anything[,] and then being under the influence of alcohol[,] I guess my vision was a little off. I shot a little bit lower than I thought . . . ," Moore recounted. When Moore and Barbara opened the door, they found Robert lying on the ground with a gunshot wound to the head. Moore and Barbara transported Robert to a local hospital, where he died the next day.

¶6. Martha learned about the shooting death of Robert on January 22, 2006. That same day, Walmart terminated her employment because she had "allowed [a] straw purchase of ammunition." A "straw purchase," according to Walmart's Firearms Training Workbook, "occurs when a [c]ustomer tries to purchase a firearm for someone else (a.k.a. the straw person) and knowingly makes a false statement on the ATF 4473 Form indicating that they are the actual purchaser."

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[3] Moore's sworn testimony provided that Robert previously had been physically abusive to Moore's mother and sister. Additionally, Moore and Robert had an extensive history of confrontations, which involved the police being contacted and Robert being taken into custody on at least one prior occasion.

[4] Moore later acknowledged this action was affected by his intoxication, as "being under the influence of alcohol . . . your mind can tell you one thing[,]" and maybe if I wasn't under the influence I wouldn't have [taken]" Robert's actions and statements in the same manner.

¶7. Moore was indicted for murder but pleaded guilty to manslaughter.

¶8. On January 20, 2009, Robert's daughter, Nydreeka Williams, by and through her natural mother, Theresa Raymond, and Raymond, on behalf of Robert's estate (collectively "Plaintiffs") filed suit against eight Walmart entities, MRW Indianola Joint Venture, Martha Parker, and John Does 1-6. All defendants except Wal-Mart Stores East, L.P., and Martha Parker (collectively "Walmart") were dismissed later without prejudice. Plaintiffs asserted that Walmart had violated Section 97-37-13 of the Mississippi Code[5] and Title 18, Section 922 of the United States Code by selling ammunition to a minor. Plaintiffs further alleged that Walmart had been negligent in its training and supervision of Martha.

¶9. Months later, Walmart filed a motion to dismiss or, in the alternative, a motion for summary judgment. It asserted that "even if the bullets in question had been sold to Xavier Moore, which [Walmart] den[ies], still, the sale to Xavier Moore was not a proximate cause" of Robert's death. Walmart relied on ***Robinson*** as support.

¶10. The trial court treated Walmart's motion as one for summary judgment and entered summary judgment in its favor. The trial court relied upon ***Robinson*** and found that Moore's subsequent criminal act was not "within the realm of reasonable foreseeability." Following the trial court's denial of the Plaintiffs' motion to alter or amend the judgment, the Plaintiffs filed notice of appeal.

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[5] Section 97-37-13 is inapplicable here. That statute prohibits any person from selling a "pistol cartridge" to anyone who is intoxicated or under the age of eighteen. Miss. Code Ann. § 19-37-13 (Rev. 2003). There is no dispute that Moore was twenty years old at the time of the purchase, and nothing in the record suggests that Moore or White was intoxicated when the sale occurred.

¶11. On appeal, Plaintiffs argue that summary judgment was improper and that a jury must decide whether Walmart's unlawful sale was a proximate cause of Robert's death.

DISCUSSION

Whether the trial court erred in granting summary judgment for Walmart.

¶12. This Court reviews a trial court's grant of summary judgment de novo. *E.g.* ***Nygaard v. Getty Oil Co.***, 918 So. 2d 1237, 1240 (Miss. 2005) (citing ***Leffler v. Sharp***, 891 So. 2d 152, 156 (Miss. 2004)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file . . . show that there is no genuine issue as to any material fact . . . ." Miss. R. Civ. P. 56(c). Further, we must view the evidence "in the light most favorable to the party against whom the motion has been made." ***Nygaard***, 918 So. 2d at 1240 (quoting ***Leffler***, 891 So. 2d at 156).

¶13. In 1968, Congress passed the Gun Control Act. Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. § 921 *et seq.*). The principal aim of this legislation "was to [curb] crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.'" ***Huddleston v. United States***, 415 U.S. 814, 824, 94 S. Ct. 1262, 1268-69, 39 L. Ed. 2d 782 (1974) (quoting S. Rep. No. 1501, 90th Cong., 2d Sess., 22 (1968)). Title 18 U.S.C. § 922(b)(1) of the Act prohibits a licensed firearms dealer from selling handgun ammunition to any person who the dealer knows, or has reasonable cause to believe, is less than twenty-one years old. 18 U.S.C. § 922(b)(1) (2006). The statute provides, in pertinent part, that:

> It shall be unlawful for any . . . licensed dealer . . . to sell or deliver . . . any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the

> firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age . . . .

18 U.S.C. § 922(b)(1) (2006).

¶14. Because we are obligated to view the evidence in the light most favorable to the Plaintiffs, we must accept as true that Moore was the actual purchaser here and that the sale violated 18 U.S.C. § 922(b)(1).

¶15. A violation of 18 U.S.C. § 922(b)(1) constitutes negligence per se. *See* ***Robinson***, 372 So. 2d at 1074, 1076. Yet:

> [t]he negligence per se doctrine does not create a new cause of action. Rather, it is a form of ordinary negligence, that enables the courts to use a penal statute to define a reasonably prudent person's standard of care. Negligence per se arises when a legislative body pronounces in a penal statute what the conduct of a reasonable person must be, whether or not the common law would require similar conduct.
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> The effect of declaring conduct negligent per se is to render the conduct negligent as a matter of law. Thus, a person whose conduct is negligent per se cannot escape liability by attempting to prove that he or she acted reasonably under the circumstances. *However, a finding of negligence per se is not equivalent to a finding of liability per se. Plaintiffs in negligence per se cases must still establish causation in fact, legal cause, and damages*.

Rains v. Bend of the River, 124 S.W.3d 580, 589-90 (Tenn. App. 2003) (internal citations omitted) (emphasis added); *see also* ***Simpson***, 880 So. 2d at 1053 (citing ***Palmer***, 656 So. 2d at 796) (stating that a plaintiff still must establish that the statutory violation was a proximate cause of the injury); ***Gulledge v. Shaw***, 880 So. 2d 288, 293 (Miss. 2004) (citing ***Jackson v. Swinney***, 244 Miss. 117, 123, 140 So. 2d 555, 557 (1962)) ("To recover, a plaintiff must prove causation in fact and proximate cause.").

¶16. Courts are split on whether the sale of a handgun to a minor may be a proximate cause of any resulting injuries to third parties. ***In re Antrobus***, 519 F.3d 1123, 1125 (10th Cir. 2008). Mississippi's position is set forth in ***Robinson***. ***Robinson***, 372 So. 2d 1074.

¶17. In ***Robinson***, Howard Brothers of Jackson, Inc., unlawfully sold a pistol and 100 rounds of ammunition to a minor. ***Robinson***, 372 So. 2d at 1074. The minor then used the pistol and ammunition that he had purchased from Howard Brothers to murder his lover. ***Id.*** The decedent's husband and others filed a wrongful-death suit against Howard Brothers and the sales clerk who had conducted the sale. ***Id.*** As here, they sought to hold the defendants liable under 18 U.S.C. § 922(b)(1). ***Id.*** Defendants admitted negligence, but they denied liability for the woman's death. ***Id.*** at 1074-75. This Court affirmed the trial court's grant of a directed verdict for the defendants. ***Id.*** at 1074, 1076. In rejecting the plaintiff's "unrestricted view" that "the murder . . . is an example of acts sought to be prevented by the statutes[,]" such that "the sale of the pistol was a contributing cause to the death . . . and liability was established as a matter of law[,]" the Court emphasized the general rule that an "'actor may reasonably proceed upon the assumption that others will obey the criminal law.'" ***Id***. at 1075-76 (quoting William L. Prosser, *Law of Torts* 173-74 (4th ed. 1971)). The Court reasoned that the minor's criminal act had been "an independent intervening cause that broke the causal connection between" the unlawful sale and the woman's death. ***Id.*** at 1076. The minor's criminal act, the Court explained, had not been "within the realm of reasonable foreseeability" because the defendants "could reasonably assume that [the minor] would obey the criminal law." ***Id.***

¶18. Plaintiffs insist that Mississippi law has evolved since ***Robinson***. They argue that this Court repeatedly has held (1) that a criminal act is not a superceding, intervening cause if the act was foreseeable and (2) that foreseeability is a jury question. Plaintiffs offer as support ***Howard Brothers of Phenix City, Inc. v. Penley***, 492 So. 2d 965 (Miss. 1986), ***Simpson***, and several premises-liability cases, ***Glover ex rel. Glover v. Jackson State University***, 968 So. 2d 1267 (Miss. 2007) (reversing summary judgment for university and remanding for a jury trial as to whether university was liable for the rape of a fourteen-year-old girl that had occurred on its campus), ***Kelly v. Retzer & Retzer, Inc.***, 417 So. 2d 556 (Miss. 1982) (affirming a directed verdict for a fast-food restaurant owner where plaintiffs had claimed that the restaurant was negligent for failing to provide adequate security and a safe premises for its patrons), ***Minor Child ex rel. John Doe v. Mississippi State Federation of Colored Women's Club Housing for the Elderly in Clinton, Inc.***, 941 So. 2d 820 (Miss. Ct. App. 2006) (reversing summary judgment in favor of an apartment complex and remanding for a jury to decide whether the apartment complex was liable for the rape of a minor that had occurred on its premises), ***Davis v. Christian Brothers Homes of Jackson, Mississippi, Inc.***, 957 So. 2d 390 (Miss. Ct. App. 2007) (affirming summary judgment for an apartment complex in a wrongful-death suit brought against it under a theory of premise liability).

¶19. Foreseeability is key in determining whether a criminal act is a superceding, intervening cause. This Court repeatedly has stated that "[g]enerally, 'criminal acts can be intervening causes which break the causal connection with the defendant's negligent act, if the criminal act is not within the realm of reasonable foreseeability.'" ***Double Quick, Inc. v. Moore***, 73 So. 3d 1162, 1166-67 (Miss. 2011) (quoting ***O'Cain v. Harvey Freeman &***

Sons, Inc., 603 So. 2d 824, 830 (Miss. 1991)); *see also* ***Double Quick, Inc. v. Lymas***, 50 So. 3d 292, 298 (Miss. 2010); ***Permenter v. Milner Chevrolet Co.***, 229 Miss. 385, 91 So. 2d 243, 245 (1956) (quoting ***Anderson v. Theisen***, 231 Minn. 369, 372, 43 N.W.2d 272, 274 (1950)) ("As a general rule, a wilful, malicious, or criminal act breaks the chain of causation."). ***Moore*** cited ***Robinson*** as support for this proposition. ***Double Quick, Inc.***, 73 So. 2d at 1166-67 (citing, *e.g.,* ***Robinson***, 73 So. 3d at 1076).

¶20. ***Robinson*** did not hold that criminal acts are *always* a superseding intervening cause; the Court, rather, held that the minor's criminal act in that case had not been foreseeable based on the particular circumstances surrounding the minor's purchase of the gun and ammunition. ***Robinson***, 372 So. 2d at 1076.

¶21. The Court in ***Robinson*** focused on the question of foreseeability in light of the specific facts before it. ***Id.*** at 1076. First, it noted that the murder had been premeditated. ***Id.*** The Court explained that "there is less reason to anticipate premeditated and malicious acts as opposed to acts which are merely negligent." ***Id.***(citing William L. Prosser, *Law of Torts* 173, 174 (4th ed. 1971)). Second, the Court emphasized that the murder had not been within the "'circle of reasonable foreseeability.'"[6] ***Robinson***, 372 So. 2d at 1076. The sales clerk

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[6] The "circle of reasonable foreseeability" has been described as follows:

> The settled law in this state may be summarized in the form of a diagram, as follows: The area within which liability is imposed is that which is within the circle of reasonable foreseeability using the original point at which the negligent act was committed or became operative, and thence looking in every direction as the semidiameters of the circle, and those injuries which from this point could or should have been reasonably foreseen as something likely to happen, are within the field of liability, while those which, although foreseeable, were foreseeable only as remote possibilities, those only slightly

there had known the minor purchaser; yet there was no evidence that the minor had a prior criminal record or had a propensity to handle firearms in dangerous manner. ***Id.*** The Court distinguished ***Robinson***'s facts from those in ***Franco v. Bunyard***, 261 Ark. 144, 547 S.W.2d 91 (Ark. 1977). ***Id.*** In ***Franco***, the Supreme Court of Arkansas held that a gun dealer's negligent sale of a firearm could have proximately caused the wrongful death of two individuals. ***Franco***, 547 S.W.2d at 93. The purchaser in that case had been an escaped convict who had a criminal record. ***Robinson***, 372 So. 2d at 1076. The minor in ***Robinson***, on the other hand, had no criminal record and no known propensity for violence. ***Id.***

¶22. In sum, the Court in ***Robinson*** found that the minor's criminal act had not been within the realm of reasonable foreseeability because: (1) the minor's criminal act was intentional and malicious, and (2) the minor had no criminal record nor any known propensity to handle a firearm dangerously or to act violently. ***Id.*** The Court applied this same rationale seven years later in ***Penley*** to reach the opposite result. *See* ***Penley***, 492 So. 2d at 967-68.

¶23. In ***Penley***, a minor entered Howard Brothers and asked to purchase a certain pistol and ammunition. ***Id.*** at 966. The sales clerk handed him the gun and placed the ammunition on the sales counter. ***Id.*** When the sales clerk turned around, the minor snatched the ammunition

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> probable, are beyond and not within the circle, -- in all of which time, place and circumstance play their respective and important parts.

Mauney v. Gulf Ref. Co., 193 Miss. 421, 9 So. 2d 780, 781 (1942); *see also* ***Gulledge***, 880 So. 2d at 293 (quoting ***Ill. Cent. R. Co. v. Bloodworth***, 166 Miss. 602, 145 So. 333, 336 (1933)). Moreover, the foreseeability inquiry is not governed by hindsight, "weighed on jewelers' scales, nor calculated by the expert mind of the philosopher," but instead focuses on "what is likely to happen, – from cause to probable effect." ***Mauney***, 9 So. 2d at 781 (quoting ***Bloodworth***, 145 So. at 336).

from the counter and loaded the gun. ***Id.*** The minor eventually grabbed a customer, Penley, and held him hostage until police were able to subdue the minor. ***Id.*** The minor, it turned out, suffered from schizophrenia and, at the time he had entered the store, was high from drinking whiskey and taking drugs. ***Id.*** Penley sued Howard Brothers for the injuries he had sustained as a result of the incident. ***Id.*** at 967. This Court held that the trial court properly had allowed the jury to decide whether Howard Brothers' negligence was a proximate cause of Penley's injury. ***Id.*** at 968. The Court distinguished ***Robinson***, explaining that injury had been foreseeable in ***Penley*** due to the minor's severely impaired state at the time of the purchase, combined with the lax, inattentive conduct of Howard Brothers. *See* ***id.***

¶24. Though ***Penley*** reached a different result, it did not depart from ***Robinson***'s mode of reasoning. The minor's criminal acts in ***Penley*** simply fell within the circle of reasonable foreseeability based upon the unique facts of that case.

¶25. Plaintiffs maintain that foreseeability is a question that must be decided by a jury. They point to ***Simpson***, which stated that "'the question of superceding intervening cause is so inextricably tied to causation, it is difficult to imagine a circumstance where such an issue would not be one for the trier of fact.'" ***Simpson***, 880 So. 2d at 1053 (quoting ***O'Cain v. Harvey Freeman & Sons, Inc.***, 603 So. 2d 824, 830 (Miss. 1991)). This statement is sound; yet ***Robinson*** and the cases it relied upon — ***Bufkin v. Louisville & N. R. Co.***, 161 Miss. 594, 137 So. 517 (1931), and ***Permenter*** — exemplify such difficult-to-imagine circumstances. Each involved an instance of this Court finding that the issue of independent, intervening cause would *not* be a question for the jury, despite the defendant's undisputed

statutory violation. *See* ***Robinson***, 372 So. 2d at 1074; ***Permenter***, 91 So. 2d at 252; ***Bufkin***, 137 So. at 517.

¶26. In cases like the one before us, a minor's criminal, intentional, malicious act — an act beyond mere negligence — breaks the causal connection *unless* the license dealer knew or had reason to know that the minor had a propensity to commit such an act. ***Robinson***, 372 So. 2d at 1076; ***Penley***, 492 So. 2d at 968. More than a negligent sale is required.

¶27. Plaintiffs further argue that the "risk of harm" that the Gun Control Act was intended to prevent was exactly the type of conduct that occurred in this case. They rely heavily on ***K-Mart Enterprises of Florida, Inc. v. Keller***, 439 So. 2d 283 (Fla. Dist. Ct. App. 1983) for support. In ***Keller***, K-Mart unlawfully sold a gun to a man who was under indictment for a felony and was an admitted drug user. ***Keller***, 439 So. 2d at 284-85. The purchaser then lent the gun to his brother, an ex-heroin addict who was taking pills and was drunk at the time. ***Id.*** at 285. Following a confrontation with his estranged wife, the brother took two relatives hostage. ***Id.*** During an ensuing standoff with police, the brother fired a shot that struck a police officer, Keller, in the head. ***Id.*** Keller filed a personal-injury suit against K-Mart, and a jury returned a verdict in Keller's favor. ***Id.*** at 284. The Third District Court of Appeal for the State of Florida affirmed. ***Id.*** at 288. It stated that "the jury could properly have found the shooting of Keller was the type of harm, or 'within the risk' designed to be prevented by the Gun Control Act — the misuse of a firearm by an irresponsible purchaser — so that K-Mart's non-adherence to that statute constituted a legal cause of the plaintiff's injuries." ***Id.*** at 286.

¶28. We find ***Keller*** unpersuasive: ***Keller*** itself noted that Mississippi law is different. The court in ***Keller*** stated that several courts have held that "criminal misuse of a firearm does not insulate the seller from liability arising out of a violation . . . of the Gun Control Act." ***Id.*** at 287 (citations omitted). It cited ***Robinson*** as contrary authority for this statement. ***Id.*** at 287 (*contra* ***Robinson***, 372 So. 2d 1074). As discussed above, ***Robinson*** is more nuanced than ***Keller*** suggests; nevertheless, the Florida appellate court recognized the distinction in Mississippi law on this issue. ***Id.*** Mississippi, furthermore, is not alone; other states follow our same approach. ***Fly v. Cannon***, 836 S.W.2d 570 (Tenn. Ct. App. 1992); ***Chapman v. Oshman's Sporting Goods, Inc.***, 792 S.W.2d 785, 787-88 (Tex. App. 1990); *see also* ***Scoggins v. Wal-Mart Stores, Inc.***, 560 N.W.2d 564 (Iowa 1997) (discussing ***Robinson*** in holding that dealer's negligent sale was not a proximate cause of a minor's suicide).

¶29. We find that summary judgment was proper in this case. Moore's shooting of Robert was a criminal act, beyond mere negligence. Further, nothing in the record suggests that, at the time of purchase, Walmart had any reason to believe that Moore would commit a criminal act. The record does not show that Moore had a criminal record or that he had exhibited a propensity for violence prior to the purchase of the ammunition.

¶30. In addition to Moore's reckless shooting of Robert and the lack of propensity evidence, there was little or no reason for Walmart even to have known that Moore was under twenty-one years of age. Construing the facts in the light most favorable to the plaintiffs, Moore simply said that he did not have his license with him; he never represented that he was or was not of legal age. Regardless, Moore was twenty years old — old enough to appreciate the danger of misusing ammunition. ***Cowart v. Kmart Corp.***, 20 S.W.3d 779,

784 (Tex. App. 2000) (noting that "[a] minor's ability to appreciate the danger of ammunition depends on the age of the minor") (citing ***Schmit v. Guidry***, 204 So. 2d 646, 648 (La. Ct. App.1967)). Though Moore said that he was not an expert in using a gun, he admitted that he had known that guns could kill people.

¶31. Considering the totality of the circumstances, Walmart reasonably could assume that Moore would obey the law. *See* ***Robinson***, 372 So. 2d at 1076.

CONCLUSION

¶32. We find that Moore's criminal act was not within the realm or circle of reasonable foreseeability at the time that the ammunition was purchased. Walmart's sale of the ammunition, therefore, could not have been a proximate cause of Robert's death. Accordingly, we affirm the trial court's grant of summary judgment for Walmart.

¶33. **AFFIRMED.**

CARLSON, P.J., RANDOLPH, LAMAR AND PIERCE, JJ., CONCUR. RANDOLPH, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., CARLSON, P.J., LAMAR AND PIERCE, JJ. DICKINSON, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, CHANDLER AND KING, JJ. KITCHENS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY DICKINSON, P.J., CHANDLER AND KING, JJ.

RANDOLPH, JUSTICE, SPECIALLY CONCURRING:

¶34. I write separately to reject the dissents' attempt unreasonably to expand and stretch the parameters of the "circle of reasonable foreseeability" (***Mauney v. Gulf Refining Co.***, 193 Miss. 421, 9 So. 2d 780, 781 (1942)), and to contravene the doctrine of *stare decisis* by denuding a thirty-three-year-old decision (***Robinson v. Howard Brothers of Jackson, Inc.***, 372 So. 2d 1074 (Miss. 1979)), while disclaiming an attempt to overrule same.

¶35. Preliminarily, neither I nor the Mississippi Legislature can subscribe to Presiding Justice Dickinson's overarching finding that individuals between eighteen and twenty-one years of age "are immature and . . . susceptible to handling firearms unsafely[,]" and his imputation of that dubious hypothesis to Congress.[7] (Dickinson Op. at ¶50). *See* Miss. Code Ann. § 97-37-13 (Rev. 2006) (criminalizes only the sale of pistol cartridges to persons under eighteen years of age). Furthermore, regarding the existence of negligence *per se*, Justice Kitchens assumes that "[a]s the victim of a violent crime, Williams was within the class of persons sought to be protected" by 18 U.S.C. § 922(b)(1). (Kitchens Op. at ¶62). But "the protection [of 18 U.S.C. § 922] was aimed at society in general." ***Estate of Pemberton v. John's Sports Center, Inc.***, 135 P.3d 174, 181 (Kan. App. 2006). As one court has stated:

> [u]nder recent federal cases, a federal court, when determining whether Congress intended to create a private right of action, must look for "'rights-creating language'" which "'explicitly confer[s] a right directly on a class of persons that include[s] the plaintiff'" and language identifying "the class for whose especial benefit the statute was enacted." ***Boswell v. Skywest Airlines, Inc.***, 361 F.3d 1263, 1267 (10th Cir. 2004) (quoting ***Alexander v. Sandoval***, 532 U.S. 275, 288, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) and ***Cannon v.***

[7]During the time that the Gun Control Act of 1968 was passed, the same federal government found hundreds of thousands of teenagers mature enough to arm and engage in war, thousands of miles from home (Vietnam War: 1961-1975), yet carved no exception in the Act for them. *See* 38 U.S.C. § 101(29) (2008). Furthermore, in 1971, only three years after passage of the Act, federal and state legislatures alike found this same group of "minors" mature enough to vote by ratification of the Twenty-Sixth Amendment to the United States Constitution. *See* U.S. Const. amend. XXVI (right to vote extended to those "eighteen years of age or older"); S.J.R. Res. 7, 92d Congress (1971), H.R.J. Res. 7, 92d Congress (1971) (overwhelming Congressional approval for the amendment (94-0 in the Senate, 401-19 in the House, and ratified by three-fourths of the states in record time (107 days)).

> ***Univ. of Chicago***, 441 U.S. 677, 688 n.9, 99 S. Ct. 1946, 60 L. Ed. 2d 560 (1979)).
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> . . .
>
> Under the federal standard for determining a private right of action, there is no legislative language in 18 U.S.C. § 922 or the accompanying provisions which can be classified as "rights-creating language" which explicitly conferred a right directly to a class of persons that includes the plaintiffs or language identifying the class for whose *especial* benefit the statute was enacted. *See* ***Boswell***, 361 F.3d at 1267. . . . [T]he legislative history of the . . . federal enactments focuses on protecting the public *in general* from crime and violence created by the ready availability of firearms. While the laws were focused at keeping firearms out of the hands of felons and irresponsible persons, the protection was aimed at society in general. . . . Based upon the federal private right of action analysis set forth in ***Boswell***, no private right of action would exist under 18 U.S.C. § 922.

Estate of Pemberton, 135 P.3d at 181 (emphasis in original).

¶36. Assuming *arguendo* that negligence *per se* is established in this case, Justice Kitchens properly acknowledges that "[t]he plaintiff still must prove causation[,]" i.e., proximate or legal cause. (Kitchens Op. at ¶60). Yet he problematically contends that "criminal acts with handguns are within the realm of reasonable foreseeability, because the very purpose of the federal legislation applicable to this sale was to curb violent crimes involving firearms." (Kitchens Op. at ¶61). This position is inapposite, as it contravenes the doctrine of *stare decisis* by avoiding the holding of ***Robinson***[8] that "[t]he criminal act *cannot* be said to have

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[8]Presiding Justice Dickinson contends that "[t]he case before us today is not even in the same galaxy as ***Robinson*** . . . ." (Dickinson Op. at ¶39). His resort to hyperbole compelled me to examine carefully the validity of his position, which I conclude is not supported by the language in ***Robinson*** or ***Munford, Inc. v. Peterson***, 368 So. 2d 213 (Miss. 1979). The ***Robinson*** and ***Munford*** decisions were sound law then, and remain so today.

In ***Robinson***, a twenty-year-old (three months and ten days short of twenty-one) was criminally charged with murder. *See* ***Robinson***, 372 So. 2d at 1074-76. The criminal disposition of the charge is not revealed. *See* ***id***. Similarly, in the present case, a twenty-

been *within the realm of reasonable foreseeability* because the defendants, although negligent per se, could reasonably assume that Alexander would obey the criminal law." ***Robinson***, 372 So. 2d at 1076 (emphasis added). *See also* ***Permenter v. Milner Chevrolet Co.***, 229 Miss. 385, 396, 91 So. 2d 243, 248 (1956) (citation omitted) ("[i]t is a familiar doctrine that everyone is justified in assuming that everyone else will obey the laws"). Since all have the right to assume that others will obey the criminal laws, "[g]enerally, 'criminal acts can be intervening causes which break the causal connection with the defendant's

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year-old minor was criminally charged with murder, but then pleaded guilty to manslaughter. By contrast, ***Munford*** involved minors between the ages of thirteen and fifteen, with no reference to "a criminally negligent act," criminal charges, or a criminal disposition. (Dickinson Op. at ¶44). The word "criminal" is never used in ***Munford***. No support in either cited case can be found for the infusion of "a criminally negligent act" to draw a parallel between ***Munford*** and the present case. (Dickinson Op. at ¶44).

The federal statute referenced in the wrongful-death complaint in both ***Robinson*** and this case was 18 U.S.C. § 922. *See* ***Robinson***, 372 So. 2d at 1074. Conversely, the state statute referenced in the suit in ***Munford*** pertained to the sale of alcoholic beverages to individuals under the age of eighteen years old. *See* ***Munford***, 368 So. 2d at 216.

Significantly, the complaint in ***Munford*** added that the minors became intoxicated as a result of drinking the beer sold to them, a distinction of great import. *See* ***id***. at 215. The ingestion of the product produced intoxication which was operative at the time of, and contributed to, the accident, such that the seller's negligence remained actionable. This is a clear distinction from the present case, for purposes of considering the existence, *vel non*, of superseding, intervening cause(s). *See* ¶37 *infra*.

Clearly, ***Munford*** is distinguishable, while "the same points" from ***Robinson*** "arise again in litigation" in the case *sub judice*. ***Caves v. Yarbrough***, 991 So. 2d 142, 150 (Miss. 2008) (quoting *Black's Law Dictionary* 1173 (8th ed. 2004)) (Dickinson, J.). ***Robinson*** involved a wrongful-death suit brought against a licensed firearms dealer under the very federal statute relied upon in this case (i.e., 18 U.S.C. § 922(b)(1)). *See* ***Robinson***, 372 So. 2d at 1074. The ***Robinson*** Court expressly distinguished ***Munford*** (only three months after deciding that case) and determined that a subsequent criminal act in ***Robinson*** was "an independent intervening agency which superseded the negligence of defendants." ***Id***. at 1076 (quoting Prosser, *Law of Torts* 173-74 (4th ed. 1971)). This Court unequivocally held that "[t]he criminal act cannot be said to have been within the realm of reasonable foreseeability because the defendants, although negligent per se, could reasonably assume that Alexander would obey the criminal law." ***Robinson***, 372 So. 2d at 1076.

negligent act,'" such that the Majority has rightfully concluded that the criminal act at issue, under the circumstances presented, was "not within the realm of reasonable foreseeability[,]" as a matter of law. ***Double Quick, Inc. v. Moore***, 73 So. 3d 1162, 1166 (Miss. 2011) (King, J.) (quoting ***O'Cain v. Harvey Freeman & Sons, Inc.***, 603 So. 2d 824, 830 (Miss. 1991)). *See also* ***Double Quick, Inc. v. Lymas***, 50 So. 3d 292, 298 (Miss. 2010) (Kitchens, J.); ***Permenter***, 91 So. 2d at 245 (quoting ***Anderson v. Theisen***, 231 Minn. 369, 372, 43 N.W.2d 272, 274 (1950)) ("As a general rule, a wilful, malicious, or criminal act breaks the chain of causation.").

¶37. Furthermore, I reject the contention that this case does not involve "a superseding,[9] intervening cause . . . ." (Dickinson Op. at ¶46). Even viewing the evidence "in the light most favorable to" the Plaintiffs, they have failed to establish as a genuine issue of material fact that Walmart's statutory "violation proximately caused the injury." ***Simpson v. Boyd***, 880 So. 2d 1047, 1053 (Miss. 2004). This Court has "repeatedly held" that "if an independent intervening agency was the proximate cause of the injury inflicted, the plaintiff can not recover upon the original act of negligence." ***Permenter***, 91 So. 2d at 252. *See also* ***Stewart v. Kroger Grocery, etc., Co.***, 198 Miss. 371, 378, 21 So. 2d 912, 914 (1945) ("if another acting independently . . . wrongfully or negligently puts in motion another and

[9]To "supersede" is to "[o]bliterate, set aside, annul, replace, make void, inefficacious or useless, repeal." *Black's Law Dictionary* 1607 (4th ed. 1968). To "obliterate" is "1. To eliminate completely so as to leave no trace. 2. To wipe out, wear away, or erase . . . ." *Webster's II New College Dictionary* 754 (2001). At the time of the accident in ***Munford***, the effect of the alcohol had not worn off or been erased (e.g., testimony that "they were 'feeling no pain'"), and remained a contributing factor to the accident. *See* ***Munford***, 368 So. 2d at 218.

intervening cause which efficiently thence leads in unbroken sequence to the injury the latter is the proximate cause [and] the original negligence is . . . remote and, therefore, a nonactionable cause."). Here, Williams "would not have been injured except for" the subsequent cumulative and "independent action[s] of": (1) Moore illegally purchasing alcohol, (2) Williams voluntarily approaching Moore's bedroom and threatening Moore with physical violence, (3) Moore's defensive reaction thereto, (4) influenced by Moore's admitted intoxication,[10] (5) followed by Moore's criminal act of shooting through the door. ***Bufkin v. Louisville & N. R. Co.***, 161 Miss. 594, 137 So. 517, 517 (1931). Walmart's negligence was broken by this series of "efficient intervening cause[s]" which "produce[d] the injury . . . ." ***Glover ex rel. Glover v. Jackson State Univ.***, 968 So. 2d 1267, 1277 (Miss. 2007) (quoting ***Gulledge v. Shaw***, 880 So. 2d 288, 293 (Miss. 2004)).

¶38. So while "[i]t is true that, except for the negligence of [Walmart], the injury would not have occurred; . . . it is also true that, notwithstanding the negligence of [Walmart], the injury would not have occurred except for the independent, intervening[,]" unlawful, and negligent acts of one person (Moore) and the independent threatening acts of another (Williams), *see* ¶37 *supra*, unrelated and disjointed from Walmart's conduct, with no injury inflicted by Walmart. ***Bufkin***, 137 So. at 518. *See also* ***Mississippi City Lines v. Bullock***, 194 Miss. 630, 13 So. 2d 34, 36 (1943) ("Negligence which merely furnishes the condition . . . upon

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[10]Herein lies the true commonality between ***Munford*** and the present case, i.e., a death was caused by an alcohol-impaired minor. The ***Munford*** Court eloquently described that "intoxicating liquors impai[r] both vision and judgment[,]" and can "stimulat[e] the baser passions, brea[k] down mental and moral resistance to temptation, and promot[e] immorality." ***Munford***, 368 So. 2d at 217 (quoting ***Alexander v. Graves***, 178 Miss. 583, 173 So. 417 (1937)).

which the injuries are received, but does not put in motion the agency by or through which the injuries are inflicted, is not the proximate cause thereof."); ***Bufkin***, 137 So. at 518 ("A wrongdoer . . . is not responsible for what others, acting independently of him, and for *themselves*, did, even though his act may be the occasion of their act. . . . [E]ach is responsible for his own act.") (emphasis added). Viewing the evidence "in the light most favorable to" the Plaintiffs, the combined actions of Moore and Williams were "intervening agenc[ies] which caused the [incident] . . . and superseded the original act of negligence of" Walmart, so as to "insulat[e]" Walmart's negligence here. ***Simpson***, 880 So. 2d at 1050; ***Permenter***, 91 So. 2d at 252; ***Bufkin***, 137 So. at 518. Such cumulative, efficient "intervening cause[s]" rendered Walmart's act so "remote" as to be "a nonactionable cause." ***Stewart***, 21 So. 2d at 914. Thus, there is "no legal connection between the negligence of [Walmart] and [Williams's] death." ***Bufkin***, 137 So. at 518.

WALLER, C.J., CARLSON, P.J., LAMAR AND PIERCE, JJ., JOIN THIS OPINION.

DICKINSON, PRESIDING JUSTICE, DISSENTING:

¶39. The case before us today is not even in the same galaxy as ***Robinson v. Howard Brothers of Jackson***,[11] the case the majority misuses to snuff out – *at the summary judgment stage* – a legitimate wrongful-death lawsuit. Because this case should be submitted to a jury, I respectfully dissent.

I. Majority opinion

[11] ***Robinson v. Howard Brothers of Jackson***, 372 So. 2d 1074 (Miss. 1979).

¶40. To its credit, the majority recognizes that, since the trial judge granted Walmart summary judgment, all factual inferences and disputes must be considered in the light most favorable to the nonmoving party who, in this case, is the plaintiff.[12] But after saying it, the majority does not do it.

¶41. There are two theories of what happened when Xavier Moore shot and killed his mother's live-in boyfriend, Robert Williams. The theory most favorable to the plaintiff is that Moore – a minor – was sleeping with his girlfriend when Williams began banging loudly on the door and making threats. Xavier was unsure of what to do. Afraid of Williams, who had physically abused Moore's mother and sister, Moore got a handgun and ammunition he had purchased illegally at Wal-Mart and – aiming high enough to avoid hitting Williams – pulled the trigger, never intending to injure Williams, but only to scare him away.

¶42. These facts simply do not support the majority's citation of, and reliance on, ***Robinson***. The facts of today's case do, however, suggest that we should follow our precedent in ***Munford v. Peterson*** – a case cited and discussed at length by ***Robinson***, but completely ignored by today's majority.

Munford, Inc. v. Peterson

¶43. In ***Munford, Inc. v. Peterson***, a convenience store clerk violated the law by selling alcoholic beverages to a minor, who then drank the beer, became intoxicated, and caused an automobile wreck, killing a passenger.[13] Facing the same arguments we face today, the

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[12]Maj. Op. ¶12; *see also* ***Chase Home Fin., L.L.C. v. Hobson***, 81 So. 3d 1097, 1100 (Miss. 2012).

[13]***Munford, Inc. v Peterson***, 368 So. 2d 213, 214-15 (Miss. 1979).

Munford Court held that the sale of the alcohol in violation of the statute constituted negligence per se, and the question of foreseeability was for the jury to decide.[14]

¶44. The parallel between ***Munford*** and the case before us today is striking. In both cases, a store clerk violated the law by selling something to a minor. In both cases, the minor used the thing purchased to commit a criminally negligent act to bring about the death of another. The minor in the case before us today, using a gun in a negligent and reckless manner, unintentionally caused Williams's death. In ***Munford***, the minor committed a reckless, criminally negligent act by driving a vehicle while under the influence of alcohol, causing the death of one of the passengers.

Robinson v. Howard Brothers of Jackson

¶45. In ***Robinson***, a store clerk unlawfully sold a gun and ammunition to a minor, who used the gun and ammunition to commit *premeditated murder*.[15] This Court held that the sale of the gun and ammunition constituted negligence per se, but the murder was unforeseeable.[16] Unlike today's majority, the ***Robinson*** Court distinguished its holding from the ***Munford*** decision by carefully and clearly limiting its scope to cases of premeditated murder:

> This case is distinguishable from the facts in ***Munford*** [discussed below] because ***in this case the purchaser of the pistol committed a premeditated murder*** whereas ***Munford*** dealt with the negligent operation of an automobile.

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[14] ***Id.*** at 217-18.

[15] ***Robinson***, 372 So. 2d at 1074 (emphasis added).

[16] ***Id.*** at 1076.

> The question of foreseeability is important in our case because ***there is less reason to anticipate premeditated and malicious acts as opposed to acts which are merely negligent***.[17]

¶46. No one claims that this is a case of premeditated murder. Rather, it is (as Moore claimed in his deposition, and as the plaintiff alleged in the Complaint) a case of negligent, reckless behavior – just as ***Munford*** was a case of reckless behavior. While the instrumentality may have been different – here, a gun; in ***Munford***, a car – neither case involved a superseding, intervening cause, and the question of foreseeability in both cases was for a jury to decide.

¶47. As the majority recognizes (but then ignores), a crucial finding by the ***Robinson*** Court was that the minor's act was intentional and malicious.[18] In this case, viewing the facts in the light most favorable to the plaintiff, the minor's act was neither. The truth is, the majority simply has decided to extend ***Robinson***'s limited holding now to apply to cases of reckless, negligent conduct. While I disagree with doing so, I would find the majority's opinion much less offensive (in the legal, not personal, sense) if it simply said so.

¶48. I find alarming the majority's *factual* conclusion that a minor's reckless, negligent use of a handgun is unforeseeable. I find it even more alarming that, in order to get there, the majority presumes to evaluate and weigh the facts. Does the majority suggest that Walmart would be insulated from liability if the age of the minor in this case had been ten? What about twelve?

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[17] ***Id.*** at 1076 (emphasis added).

[18] ***Id.***

¶49. The test for foreseeability does not involve anticipation of the exact damage or harm, but rather anticipation of the type of harm inflicted.[19] How on earth can the majority find it unforeseeable that minors will use handguns negligently and irresponsibly? I find it completely foreseeable, and I am not alone.

¶50. Congress enacted the Gun Control Act[20] to prevent persons under twenty-one years of age – who, in their opinion, are immature and thus susceptible to handling firearms unsafely – from purchasing firearms and ammunition.[21] While it is fairly debatable whether the Walmart employee should have foreseen that illegally selling handgun ammunition to a minor would result in a criminal act – like the one committed in ***Robinson*** – it was most certainly foreseeable that the minor might act recklessly and immaturely, and commit a negligent act. So I cannot agree with the majority.

II. Justice Randolph's specially concurring opinion

¶51. The specially concurring opinion – while attaching a "dubious hypothesis" label to my conclusion that, in passing the Gun Control Act, Congress was concerned that minors would handle handguns unsafely – offers no alternative theory as to why Congress would select an age requirement for the use of handguns. It seems rather obvious to me that the old saw – "with age comes maturity" – played some part.

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[19] ***Rein v. Benchmark Const. Co.***, 865 So. 2d 1134, 1145 (Miss. 2004).

[20] 18 U.S.C. § 922(b)(1) (2006).

[21] It was Congress who established the cut-off age of immaturity for the use of handguns and, when doing so, they did not – as the concurring opinion would suggest – consult me.

¶52. And its reference to eighteen-year-olds in the military would have us assume the Unites States Army issues handguns to new recruits upon their arrival at boot camp. I would need to see some proof to accept that theory. Additionally, employing curious logic, the specially concurring opinion asserts that the Mississippi Legislature is unconcerned about minors handling handguns, but then immediately cites Section 97-37-13 – a statute that clearly demonstrates the Legislature's concern about minors having handguns.

¶53. The specially concurring opinion rejects the notion that this Court's holding in ***Robinson*** was limited to cases involving the commission of premeditated murder. In fact, tucked away in a footnote lies the statement: "The criminal disposition of the charge is not revealed."[22] The ***Robinson*** opinion says otherwise.

¶54. ***Robinson*** declares early on that "Alexander *murdered* Mrs. Robinson with the pistol and ammunition purchased from Howard Bros."[23] The opinion then refers to "the *murder* of Mrs. Robinson," and later states: "in this case the purchaser of the pistol committed a premeditated *murder*."[24] In truth, the ***Robinson*** opinion refers to the "*murder*" of Mrs. Robinson seven times.[25] Hard for me to accept that this Court would label someone a murderer who had not been convicted of murder.

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[22]Randolph Op. n.8.

[23]***Robinson***, 372 So. 2d at 1074 (emphasis added).

[24]***Id.*** at 1075-76 (emphasis added).

[25]***Id.*** at 1074-76.

¶55. The fact is, this Court's holding in ***Robinson*** was specifically and explicitly limited to cases of premeditated murder, and neither Justice Randolph nor the majority offer any analysis or logical argument to the contrary.

¶56. And finally (as to the specially concurring opinion's treatment of ***Robinson***), I reject its use of snippets from here and there to create the blanket notion that, because everyone is justified in assuming others will obey the criminal law, then – *ipso facto* – the commission of a criminal act is a superseding intervening cause. That principle – if true – would considerably alter Mississippi tort litigation, eliminating, for example third-party responsibility for traffic violations (all of which are criminal acts), dram shop cases (such as ***Munford***), negligent entrustment cases, and many others.

¶57. Turning to the specially concurring opinion's analysis of ***Munford***, I struggle to see the point it attempts to make. If its point is that ***Munford*** has no application here because the intoxicated driver was not actually charged with a crime (it seems obvious to me he was), then what if he had been charged with, and convicted of, a crime? The specially concurring opinion obviously takes the view that – where the State successfully prosecutes a driver for negligent homicide for driving under the influence – there can be no civil liability to sellers of alcohol. I reject that view.

¶58. Today's holding – and the specially concurring opinion's elaboration of it – both unjustifiedly expand ***Robinson***, and I cannot agree with them. I respectfully dissent.

KITCHENS, CHANDLER AND KING, JJ., JOIN THIS OPINION.

KITCHENS, JUSTICE, DISSENTING:

¶59. Because this is not one of those rare cases when the question of causation should be taken away from the jury, I would reverse the grant of summary judgment and remand the case for trial.

¶60. The doctrine of negligence *per se* relieves the plaintiff of the burden of proving lack of due care on the part of the alleged tortfeasor if the defendant's violation of a statute proximately caused or contributed to the plaintiff's injury. ***Simpson v. Boyd***, 880 So. 2d 1047, 1052 (Miss. 2004) (citing ***Palmer v. Anderson Infirmary Benevolent Ass'n***, 656 So. 2d 790, 796 (Miss. 1995)). Negligence *per se* applies if "(1) the plaintiff is within the class protected by the statute, and (2) the harm sustained is the type sought to be prevented by the statute." ***Id.*** (citing ***Palmer***, 656 So. 2d at 796). The plaintiff still must prove causation, but "the question of superseding intervening cause is so inextricably tied to causation, it is difficult to imagine a circumstance where such an issue would not be one for the trier of fact." ***Id.*** (quoting ***O'Cain v. Harvey Freeman & Sons, Inc.,*** 603 So. 2d 824, 830 (Miss. 1991)). Of greater importance, criminal acts of third parties do not, by definition, automatically relieve the defendant of liability. ***Id.***

¶61. Unlike most negligence *per se* claims, criminal acts with handguns are within the realm of reasonable foreseeability, because the very purpose of the federal legislation applicable to this sale was to curb violent crimes involving firearms. ***Huddleston v. United States,*** 415 U.S. 814, 824, 94 S. Ct. 1262, 39 L. Ed. 2d 782 (1974). One reasonably could expect that the violation of a statute that was designed to curb violent crime proximately could result in the commission of a violent crime. In other words, criminal acts presumably are within the realm of reasonable foreseeability.

¶62. As the victim of a violent crime, Williams was within the class of persons sought to be protected, and his death was the type of harm the statute sought to prevent. Thus, the doctrine of negligence *per se* applies and relieves the plaintiffs of proving that Moore had a propensity for violence, or that Walmart knew of Moore's violent nature. By requiring the plaintiffs to demonstrate such additional facts, the majority removes the claim from negligence *per se* and places it within the realm of general negligence. *Cf.* ***Corley v. Evans***, 835 So. 2d 30, 38-39 (Miss. 2003) (premises owner liable for assault by third party if the owner has actual or constructive knowledge of the assailant's violent nature) (citations omitted).

¶63. Moreover, despite the majority's finding to the contrary, a jury should determine whether Walmart knew or should have known that the shooter was underage. It is undisputed that a Walmart employee facilitated a "straw purchase." A jury reasonably could infer from the evidence that Moore had his friend buy the cartridges because he was not legally permitted to do so himself – in this case, because he was under twenty-one years of age.

¶64. The majority also finds that twenty-year-olds, as a matter of law, are "old enough to appreciate the danger of misusing ammunition," reasoning that Moore "had known that guns could kill people." Again, this is a question for the fact finder. A ten-year-old child might know that guns can kill, yet the United States Congress has drawn the line at twenty-one. It is up to the fact finder, not the judge, to determine what role, if any, Moore's age played in the death of Robert Earl Williams.

¶65. Certainly, a violation of the federal law, on its own, does not automatically subject Walmart to liability for Williams's death. In the same way, criminal acts do not automatically insulate Walmart from liability. Yet, one who violates a law that was legislatively designed to curb criminal activity cannot escape civil liability by relying on an assumption that persons will obey the criminal law. The plaintiffs still must demonstrate that "the injury inflicted is not different in kind from that which would have resulted from the [unlawful sale]." ***Bullock v. Fairburn***, 353 So. 2d 759, 763 (Miss. 1977) (citations omitted). But, in this case, that determination is for the jury.

DICKINSON, P.J., CHANDLER AND KING, JJ., JOIN THIS OPINION.