

Tort Law: Negligence

Case 12:  
When  
Neighbors  
Attack

CASE: 12

# Volpe v. Gallagher

## Landowner's Duty of Care to Control Actions of a Person on His/Her Property

### OBJECTIVE

To understand the duty of homeowners for actions taken by individuals on their property.

### TOPICS COVERED

- Landowner's duty of care to prevent criminal acts of third person "licensees" on his/her property
- Exception to rule of landowner's duty of care to prevent criminal acts of third person "licensees" on his/her property
- Duty to Inspect Property

# Volpe v. Gallagher

## Landowner's Duty of Care to Control Actions of a Person on His/Her Property

### BACKGROUND

- The Plaintiffs, Raymond Volpe and Joyce Almonte, accused their neighbor, the Defendant, Mrs. Sara Gallagher, of negligence by failing to inspect the bedroom of her son, James Gallagher. They alleged that Mrs. Gallagher, as the owner of property, had a duty to inspect the premises for dangerous conditions.
- James Andrew Gallagher, a mentally ill 34-year-old adult and an occupant at the Defendant's home, kept guns and ammunition in the Defendant's home and used these firearms to shoot and kill his next-door neighbor, Ronald Volpe, for no apparent reason.
- Mrs. Gallagher asserts that she did not know that her son kept guns or ammunition on her property; and even if she did know, she could not have known that her son would use them to murder her next door neighbor, as he had no history of violence prior to this tragedy.

### BEFORE YOU BEGIN

- What is a landowner's duty of care for criminal acts of third persons?**

A landowner has no duty to protect another from intentional criminal acts of third parties that take place on his/her property or the public way.

- What is an exception to the landowner's duty of care for criminal acts of third persons?**

Landowners have a duty to prevent third persons that they permit to use their property from intentionally harming or creating an unreasonable risk of bodily harm to others—where the landowner has the ability to control the third person and knows, or should know, of the need to exercise such control.

- What is the landowner's duty to inspect property?**

A possessor of land has a duty to inspect the premises for dangerous conditions.

## ISSUE BEFORE THE COURT

Whether the Defendant Gallagher, as a landowner, owed a duty to her neighbors, Plaintiffs Volpe and Almonte, to prevent her mentally ill son, a licensee, from conducting himself on her property in a manner that created an unreasonable risk of bodily harm to her neighbor.

## THE FACTS

“Who knew? In essence, that was the defense to the charge of negligence in this lawsuit.” The Plaintiffs, Raymond Volpe and Joyce Almonte, accused the homeowner, Defendant Mrs. Sara Gallagher, of negligently allowing her mentally ill adult son, James Andrew Gallagher, to keep guns and ammunition on her property.

On July 3, 1994, the date of the murder—James Andrew Gallagher, 34 years old, lived with his mother, Mrs. Gallagher, in her small North Providence, Rhode Island, ranch house. James, who had no job and no friends, suffered from hallucinations, imaginary conversations, and paranoia. James spent long hours by himself in his bedroom located in the basement of Mrs. Gallagher’s home.

In this basement bedroom, James kept a shotgun, a pistol, boxes of ammunition, and related gun paraphernalia. On the date in question, for no known reason, James suddenly emerged from the basement of the Defendant’s home with his loaded shotgun in hand and shot his neighbor, Ronald Volpe, three times while the victim was trimming the hedges between their two houses.

After discharging the shotgun three times into Volpe’s head and body, James returned, shotgun in hand, to his basement leaving the victim’s dead body facedown in the hedges.

After hearing the gunshots, Mrs. Gallagher stood at her side door as James brushed by her on his way back down to the basement. James admitted to her that he had just shot the victim.

Thinking that her son just might be hallucinating again, but troubled by the “fireworks” she had heard, Mrs. Gallagher called her two daughters who lived nearby and asked them to come over to the house right away. They did so and quickly enlisted the help of a neighbor.

A licensee is a person who is on the property of another (with permission), despite the fact that the property is not open to the general public.

Walking over to the hedges that bordered the Volpe and Gallagher houses, the neighbor soon discovered Volpe's body and called the police.

Meanwhile, one of the Defendant's daughters entered the basement, removed a handgun from a dresser drawer, and hid it under a pillow on the living room couch until the police arrived and arrested James.

The Plaintiffs brought a wrongful-death lawsuit against Mrs. Gallagher. They also attempted to sue the incarcerated James Andrew Gallagher, but he did not testify or otherwise participate in the trial of this civil case.

Charged with first-degree murder by the state, James eventually dropped his insanity defense and pled nolo contendere (no contest) to a reduced criminal charge of second-degree murder. Throughout this trial action, James remained imprisoned for this crime.

According to Mr. Volpe and Ms. Almonte, the Defendant knew or should have known that by allowing her mentally ill son to possess guns and ammunition under his condition, she created an unreasonable risk of bodily harm to others.

Although James was not formally diagnosed with mental illness, at trial, Mrs. Gallagher admitted, "I knew he wasn't right. I just didn't know what was wrong with him [...] he just wasn't acting right. He always wanted to be alone in darkness. He was acting peculiar."

However, Mrs. Gallagher stated, "I just wouldn't allow anybody to have guns in the house. I was afraid of them and didn't want them. If I had known that my son had a gun, I would have told him to get rid of it. If he didn't, I would have." Gallagher argued that she did not know that James had guns and ammunition in her home. Further, even if she had known, her son had no history of violence. Therefore, she argued that she could not have foreseen that one day he would shoot their next door neighbor using any of the guns and ammunition that he kept at her home.

#### Sources

The case briefing above contains excerpts and direct extractions from the sources noted below that have been combined with the author's own expert legal input. The case has been condensed and formatted from its original content for purposes of this workbook.

Volpe v. Gallagher, 821 A.2d 699 (R.I. 2003).

Rhode Island Supreme Court

May 12, 2003. Opinion written by the Honorable Justice Robert G. Flanders.

**Nolo Contendere** (no contest) is a Latin term which means "I do not wish to contest." It refers to the plea by an individual in a criminal case where he/she does not wish to contest the charges against him/her.

The **duty of care** is a legal obligation set on an individual that they act with a standard of reasonable care to prevent foreseeable harm to others. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit of negligence.

NAME \_\_\_\_\_

DATE \_\_\_\_\_

## Review the Case

After reading Volpe v. Gallagher, answer the following:

1. Identify the Plaintiff(s) in the case.

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2. Identify the Defendant(s) in the case.

\_\_\_\_\_

3. Are the Plaintiff(s) looking for compensation in the form of money from the Defendant?

\_\_\_\_\_

4. What is the relationship between Mrs. Gallagher and James Gallagher?

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5. How old was James Gallagher when he committed the criminal act?

\_\_\_\_\_

6. What symptoms of mental illness did James Gallagher suffer from?

\_\_\_\_\_

7. Did a medical physician ever diagnose James Gallagher regarding his mental illness?

\_\_\_\_\_

8. What crime(s), if any, was James Gallagher charged with, and how were those criminal charges ultimately decided?

\_\_\_\_\_

\_\_\_\_\_

9. Did Mrs. Gallagher periodically inspect her son's room for guns or any other weapons?

\_\_\_\_\_

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### **Review the Case (continued)**

- 10.** Did Mrs. Gallagher have a right, as the owner of the property, to inspect her son's room for weapons, even though he was an adult at the time of the incident?

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- 11.** What were Mrs. Gallagher's arguments as to why she should not be responsible for the actions of her son? Be specific.

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NAME \_\_\_\_\_

DATE \_\_\_\_\_

## Make the Argument

In order for the judge or jury to render a decision, the following are some of the questions that must be considered:

1. Did Mrs. Gallagher, as the owner of the property, have a duty to her neighbors to keep her premises safe from dangerous conditions, in this case, her son harboring weapons? Explain.

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2. Did the Defendant, Mrs. Gallagher, as the owner of the property, know that James Andrew Gallagher had weapons in his room?

\_\_\_\_\_

3. Should Mrs. Gallagher, as the owner of the property, have known that her son had dangerous weapons in his room?

\_\_\_\_\_

4. Did Mrs. Gallagher know that her son, James, was a dangerous person? Explain.

\_\_\_\_\_

5. Did Mrs. Gallagher breach her duty of care to her neighbors by failing to inspect the premises for dangerous conditions, i.e., guns in her son's room? Explain.

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6. Could Mrs. Gallagher control her son's actions where she could demand he remove the guns from his room? Explain.

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7. Did the fact that James Gallagher harbored weapons in his room create an unreasonable risk of foreseeable harm to the Volpes/Almontes? Explain.

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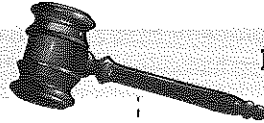
NAME

DATE

## You Be the Judge

Having reviewed the case and considered the questions involved, decide the case for either the **Plaintiff** or the **Defendant**:

**Decision for the Plaintiff**



**Decision for the Defendant**

**Raymond Volpe and Joyce Almonte**

**Mrs. Sara Gallagher**

Lined writing area for the Plaintiff's decision.

Lined writing area for the Defendant's decision.

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