that Bonnie did not owe a duty to control Donald or prevent his misconduct. The second was that the court erred when it determined that Bonnie did not undertake a gratuitous duty to supervise.

Ruling and Reasoning

The court first recognized that in general, while there are some exceptions to the rule, individuals do not have a duty to prevent third-party misconduct unless there exists "a special relationship" and if the criminal acts were foreseeable. The court determined that Bonnie was not under "a special relationship" duty to control Donald's actions. The court agreed with the finding of the circuit court summarizing, "Donald was a 42-year-old emancipated adult at the time of the shooting. He lived by himself out of the state and had not resided with Bonnie since high school. Donald was not the subject of a guardianship, and there were no restrictions on his movement or conduct" (*Koenig*, p 653). Furthermore, the court found nothing special in the relationship. "As his mother, Bonnie was involved and supportive" of his "effort to address his mental health. But this relationship appears to be no more special or remarkable than would the case of any parent concerned for the health of an adult child" (*Koenig*, p 653–654). The court determined that Bonnie was not liable for Sergeant Koenig's injuries.

The court next determined if Bonnie's actions increased the risk of harm. The Koenigs had argued that Bonnie's alleged statements regarding the ATF created a foreseeable risk of harm to others, which she had a duty to prevent. The court, however, concluded that "Bonnie's purported comments about the ATF did not create a foreseeable high risk that Donald would act criminally to harm Sergeant Koenig" (*Koenig*, p 658).

Finally, the court reviewed the question of Bonnie's actions creating a gratuitous duty to supervise. After restating the relevant rule, the court noted that there was no support in law for a person being held responsible for an adult child, who was previously living independently without assistance. They found no authority for this and described the Koenigs' argument as a "but-for causation," and not a persuasive argument that Bonnie was "voluntarily assuming a duty to supervise another adult" (*Koenig*, p 659).

Discussion

The duty to protect others from the harm of third parties is an area of negligence law with some controversy. In the tort of negligence, one must prove a legal duty existed, the behavior of an actor breached that legal duty, the actor behaved in a way that was the actual and proximate cause of a harm, and the harm constituted a legally recoverable damage. The question of duty is always a question of law. One owes duties to others based on the relationship between the parties. There are also a general duty not to incite others to foreseeable tortious or criminal acts and a duty to protect others if one created a peril. One may also assume a duty by intervening in a situation where actions may prevent a harm if executed in a nonnegligent manner.

The *Koenig* case contributes to the complex litigation involving duties to third parties and third-party liability. A duty to third parties, as in the *Tarasoff* progeny of cases, exists based on the relationship between the relevant parties. In general one is responsible only for foreseeable consequences of one's actions or omissions. Had the court decided differently, this case would have had perilous consequences for the families of people who are mentally ill. One can easily imagine facts where parents of an individual with serious mental illness who is dependent on them might be found to have a duty to protect others. For purposes of a forensic evaluation, determining the level of disability and dependence, and discussing the nature of the care relationship, may be useful in elucidating details and assisting the court in the determination of the nature of a legal duty based on relationships. This case presented the possibility that the court might use the power of hindsight to expand the duties of the parents of adult children with mental illness. The court, however, took a conservative approach consistent with existing precedent in South Dakota, and did not create a new duty for parents.

Criminal Competencies and Extreme Racial Views

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Extreme Racial Views That Affect Decision Making Do Not Necessarily Render an Individual Incompetent to Stand Trial or Negate a Right to Self-Representation

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In *United States v. Roof*, 10 F.4th 314 (4th Cir. 2021), Dylan Roof challenged his conviction and death sentence on religious obstruction and firearm counts. Mr. Roof argued that the U.S. District Court for the District of South Carolina erroneously found him competent to stand trial and erred in granting his motion to proceed *pro se* during the penalty phase of his conviction. The Fourth Circuit Court of Appeals held that the U.S. District Court for the District of South Carolina did not err in determining that Mr. Roof was competent to stand trial or by granting Mr. Roof's motion to dismiss his counsel and proceed *pro se.* The Fourth Circuit further rejected Mr. Roof's challenges of alleged errors involving the validity of his conviction under the federal religious-obstruction statute and procedural errors related to his death verdict.

Facts of the Case

On June 17, 2015, Mr. Roof entered the Fellowship Hall of Mother Emanuel, a historic African American church. He joined the church leaders and twelve African American parishioners for their nightly Bible study. Mr. Roof carried a small bag containing a concealed Glock .45 semi-automatic handgun and eight magazines loaded with eleven bullets each. He participated in the Bible study, and after forty-five minutes of worship, Mr. Roof began shooting parishioners while they prayed. He fired approximately seventy-four rounds. Mr. Roof kept one of the parishioners alive to tell the story. He left the church after killing nine parishioners.

The police stopped Mr. Roof while driving in Shelby, North Carolina. He was taken to the police station without incident. The FBI obtained a written *Miranda* waiver. During the interview, Mr. Roof identified himself as a "white nationalist." The FBI asked if Mr. Roof was trying to start a revolution, and he responded, "I'm not delusional, I don't think that [,] you know, that something like what I did could start a race war or anything like that" (*Roof,* p 332). Prior to the attack, Mr. Roof researched Mother Emanuel, and he learned of the Bible study group that met on Wednesday nights. Hours before the shootings, he uploaded racist materials to a website that he created.

Mr. Roof was initially charged with murder, attempted murder, and weapon possession by the state of South Carolina. He was later indicted in the U.S. District Court for the District of South Carolina with several counts of racially motivated hate crimes resulting in death (and attempts to kill), obstructing religious exercise resulting in death, and the use of a firearm to commit murder during (and in relation to) a crime of violence. The federal government sought the death penalty. Mr. Roof filed a motion for a complete dismissal of the indictment on the principal grounds that the religious-obstruction charges were invalid as he did not engage in interstate commerce. This motion was denied by the district court.

Mr. Roof's lawyers requested an evaluation of his competency to stand trial after he sent a letter to the prosecution expressing strong opposition to his lawyers' presenting mental illness mitigation evidence that he believed would discredit his racial motivations for committing the murders. The court-appointed expert testified that Mr. Roof was competent to stand trial because he did not have difficulty understanding criminal proceedings and it was clear that he could cooperate with his attorneys if he desired. The expert further opined that Mr. Roof's unwillingness to cooperate was not due to psychosis but rooted in a "deep-seated racial prejudice." Multiple defense experts testified that Mr. Roof had autism spectrum disorder and appeared delusional, possibly exhibiting a psychotic disorder.

One defense expert commented on Mr. Roof's competency to stand trial, opining him incompetent due to the presumably psychotic belief that he would not be executed even if he were sentenced to death. The other defense experts expressed "concerns" about Mr. Roof's competency but did not opine directly on competency. During the hearing, Mr. Roof told the court that he did not communicate with his attorneys because he did not agree with their mitigation strategy and that he committed his crimes to increase racial tensions. The district court determined that Mr. Roof was competent to stand

trial. The district court granted Mr. Roof's motion to dismiss his counsel and proceed *pro se* during the penalty phase of his capital trial to prevent his lawyers from presenting mental illness mitigation evidence.

Another competency hearing was conducted prior to the penalty phase of the trial after Mr. Roof's advisory counsel challenged his competency to stand trial and his ability to represent himself during the penalty phase. His advisory counsel was concerned after Mr. Roof forwent presenting mitigation evidence. The court-appointed expert again opined that Mr. Roof was competent. Defense experts provided updated reports, but none had reexamined Mr. Roof since the initial competency hearing. Mr. Roof confirmed during the second hearing that he wanted to represent himself and prevent his lawyers from undermining his message with mental illness evidence. The district court found Mr. Roof "plainly competent to proceed." Mr. Roof represented himself during the penalty phase and he did not present mental health mitigation evidence. He was found guilty on all counts and sentenced to death. Mr. Roof appealed the district court's verdict in four broad categories: his competency to stand trial; his self-representation; and alleged errors in the penalty and guilt phases of the trial, including whether the charging statutes were unconstitutional.

Ruling and Reasoning

The Fourth Circuit ruled that the district court's determination of Mr. Roof's competency was not clear error and did not warrant reversal. The Fourth Circuit concluded that the district court appropriately applied the standards outlined in *Dusky* v. *United States,* 362 U.S. 402 (1960) in both competency determinations, by considering testimony from a credible court-appointed expert, direct observations of Mr. Roof, and Mr. Roof's own testimony. The court-appointed expert opined that Mr. Roof chose not to communicate with his lawyers to avoid contaminating the messaging of his crimes with mental illness evidence. The defense experts (except for one) did not comment on how Mr. Roof's alleged psychotic symptoms or autism spectrum disorder diagnosis affected his competency. Discrepancy between expert opinions did not warrant reversal of the district court's competency determination. The district court was within its discretion to rely upon the court-appointed expert's testimony and its own observations of Mr. Roof.

The Fourth Circuit determined that the district court did not err in granting Mr. Roof's motion to proceed *pro se*. A competent defendant's right to self-representation is implied in the Sixth Amendment and was ratified by the Supreme Court in *Faretta v. California,* 422 U.S. 806 (1975). Mr. Roof's claim that he did not have the right to self-representation during the penalty phase failed because the rights outlined in *Faretta* encompassed the right to self-representation in capital sentence hearings. The Fourth Circuit agreed with the district court's assigning control of legal tactical decisions (including whether to present mental illness evidence) to Mr. Roof's attorneys. Mr. Roof relied on *United States v. Read*, 918 F.3d 712 (9th Cir. 2019) (outlining a defendant's right to avoid an insanity defense) to argue that he be allowed to restrict his lawyers from presenting mental illness evidence. His claim was rejected because decisions about presenting evidence were "far less consequential" than the admission of guilt required in insanity defenses. The Fourth Circuit rejected Mr. Roof's other contentions about the constitutionality of the federal charging statutes and procedural errors during his trial.

Discussion

The decision in *United States v. Roof* underscores the necessity of assessing for a nexus between observed psychopathology and psycho-legal abilities. *Dusky* prescribes the standard for finding a defendant incompetent to stand trial. Assessing competency involves the careful determination of a defendant's understanding of criminal proceedings and ability to assist in one's defense. The presence of a mental illness and symptoms alone do not automatically imply incompetence. A forensic evaluator must clearly determine the impact of psychiatric symptoms on competency.

Although Mr. Roof's racist views were difficult to comprehend, they were not necessarily psychotic and warranted proper investigation. Individuals may harbor extreme views while not meeting criteria for a formal mental disorder. Regardless, Mr. Roof's extreme racial beliefs were solely not enough to render him incompetent to stand trial or to prevent him from proceeding *pro se.* The tension between Mr. Roof and his attorneys regarding

the proper legal strategy affected court proceedings. The court and Mr. Roof's attorneys posed an important forensic question to the experts: did Mr. Roof's beliefs stem from a mental illness that was affecting his legal decision-making? Most of the defense experts expressed their concerns about Mr. Roof's beliefs but did not directly comment on how those beliefs affected his competency. The court assigned more credibility to the expert who directly and thoroughly answered the question of Mr. Roof's competency to stand trial. *United States v. Roof* is a reminder for forensic experts to comprehensively answer the forensic questions posed.