

Another child dies in a hot car, and Gene Weingarten asks: Why was this a crime?

By Gene Weingarten, weingarten@washpost.com Published: March 15

It was stifling hot on the summer morning 29 years ago when I almost murdered my daughter.

“Murder” is an unforgiving term for what nearly happened that day, but to prosecutors in Prince William County, it is appropriate. That was the charge they brought last year against Bristow veterinarian Karen Murphy, whose 2-year-old, Ryan, did not do what my 2-year-old, Molly, did on the day I almost killed her: wake up at the last minute and say something.

So I didn’t park and lock my car and head into my office that morning, as Murphy did last June 17. Instead, after steadying my nerves against the knowledge of what I’d almost done, I drove my daughter to day care, as I’d meant to do before I somehow — inexplicably, inexcusably — forgot that she was sitting in the back seat.

For her grievous mistake, Murphy faced a possible 40 years in prison on a charge of felony murder. Just before her trial this past week, as she quietly wept in court, the 41-year-old veterinarian was permitted to plead guilty to reduced charges of misdemeanor child neglect. She won’t go to prison. She won’t lose her medical license. All she faces is 400 hours of community service, six years of probation, and a lifetime of grief and shame that will sabotage joy whenever that emotion dares to surface. That is what happens in these cases. I know. I have studied them.

These seemingly unimaginable tragedies happen with grisly regularity in the United States — 15 to 30 a year, mostly during the spring and summer months, when temperatures are high enough to kill. The facts tend to be remarkably similar: The parent is usually an ordinary, responsible person who was under unusual stress — stress that neuroscientists have found can trigger a hiccup in the memory system of the brain. On the morning that Murphy’s inattention killed Ryan, she’d already made a round-trip, pre-dawn visit to her clinic to tend to a critically ill patient.

The compassion that was eventually shown to Murphy in court led — as it almost inevitably does in these cases — to an ugly spasm of online denunciation, in the form of anonymous reader “comments” on news stories reporting the plea deal. “Mommy Dearest will be popping open the bubbly tonight,” predicted TommyMcGuire on The Washington Post’s Web site. On WJLA’s site, Lucre3 thundered: “SHE NEEDS TO BE LOCKED UP AN [sic] FORGOTTEN. HONESTLY SHE DOESN’T DESERVE TO LIVE.” Many suggested forced sterilization. Said RJM: “Maybe she should get one of her vet friends to spay her.”

If the ugliness seems puzzling to you, it doesn’t to psychologists who have examined this phenomenon. It’s a form of denial, they say: Deep down, people understand that all lives are fragile, that we are all capable of momentary mistakes or misjudgments that could destroy us. We don’t want to face this terrifying fact. So we must convince ourselves that the people to whom it happens are unlike us. To sustain our delusion of safety, we must make them monsters.

To get a measure of the monster that is Karen Murphy, I recommend a short video clip from January 2009. Murphy is being interviewed at a veterinary convention in Orlando. At the time, Ryan was 6 months old, the youngest in a family of five. Murphy proudly discusses some new, patient-friendly technologies she’s added to her animal hospital. She is cheerful, buoyant, filled with hope.

That person doesn’t exist anymore. If other cases are any indication, she may never come back.

Murphy’s lawyer, Edward MacMahon, spent months negotiating the plea deal. His goal, he told me, was to leave his client a chance to emotionally survive and a chance for her family to stay together. That meant

holding out for no prison time, he said, and no felony conviction, which would probably have ended her medical career.

It wasn't an easy negotiation, because there was a complication. Five months before the tragedy, Murphy, similarly stressed, had forgotten Ryan in her car under nearly identical circumstances; the mistake was discovered after 20 minutes only because the day-care center called to ask why the boy hadn't been dropped off. To brain scientists, this would be evidence less of negligence than of Murphy's particular susceptibility to memory malfunction. But to a jury, it would probably have been damning.

And that's the crux of this issue: Should these cases — where there is no intent to harm and no additional contributory negligence such as substance abuse; where the event was triggered entirely by a lapse of memory — be treated as crimes?

Nationally, there is no consensus. According to statistics compiled for The Washington Post by Kids and Cars, a child-safety advocacy group, in roughly 40 percent of these cases, the death is declared accidental and no charges are filed. The other 60 percent — with nearly identical facts, and under nearly identical state laws — are aggressively prosecuted on charges ranging from child neglect to murder.

The second choice is the more expedient — the one less likely to subject a prosecutor to public criticism for being too lenient. It is also the choice that further torments a devastated family at precisely the time it so desperately needs to grieve. It can have insidious consequences. The husband or wife who is trying to find the ability to forgive a spouse's terrible mistake must also try to forgive the financial ruin that a legal defense can bring.

During my research for a 2009 Washington Post Magazine story on this subject, I spoke with 13 parents who had accidentally killed their children this way. All were haunted by remorse. Some who were prosecuted were deeply resentful; others, much less so. But all who were prosecuted felt strongly that the proceedings had further damaged their families in ways difficult to repair. The families felt twice punished for something none of them saw as a crime.

Criminal prosecution and incarceration are said to serve three purposes: punishment, protection of the community and deterrence of others with similar malign intent. In these cases, the last two goals disappear. The parents are a continuing danger to no one, nor could anybody sanely argue that fear of prison is even a minuscule factor in preventing this. So we are left with the nebulous notion of punishing, for punishment's sake alone, an act of accidental negligence that by its nature subjects the doer to a lifetime of agony so profound that it is unfathomable to anyone who has not lived it. Prosecution is not, in my view, warranted.

You see my bias in this matter. I make no excuses for it. I have the facts, just as you do; the main difference is that, probably unlike you, I understand on an uncomfortably personal level that this unthinkable, impossible horror could befall anyone.

I feel no sense of superiority to any of those parents whose children did not happen to wake up and say something. I am alert to the ironies of life and death. I recognize that it is simply a matter of chance that Molly is not a pile of small bones in the dirt in Florida, but alive and working today in a clinic a few miles away from me, as a veterinarian.

Gene Weingarten is a Washington Post staff writer. His article "Fatal Distraction," about children left in cars, was awarded the 2010 Pulitzer Prize for feature writing.

Read "Fatal Distraction" - <http://kidsandcars.org/upload/pdfs/articles/2009/2009-03-08-WP-Mag-Fatal-Distraction.pdf>

http://www.washingtonpost.com/opinions/another-child-dies-in-a-hot-car-and-gene-weingarten-asks-why-was-this-a-crime/2012/03/14/gIQAXm01ES_story.html