

## **D.A. tries to send message; family says charges facing teen too harsh**

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Prosecutors in Williamson County say they want to set an example with 18-year-old Brandi Gussow, but some think charging her with second-degree murder is heavy-handed and an abuse of the law.

For Mark Gussow, Brandi's father, the authorities in Williamson County are victimizing his grief-stricken family all over again.

"Brandi — she's suffered enough," Gussow said. "Our whole family has suffered enough. We lost our son, and now all this is going to happen. We're the victim twice."

Brandi Gussow is accused of giving LSD to her brother, Shawn, 15, before the boy walked along Interstate 40 in Nashville. Shawn Gussow was killed when at least one car hit him at the I-40/I-65 interchange Feb. 4, 2001.

Mark Gussow said his daughter spent months in counseling dealing with her brother's death, and now the family is dealing with the murder charge. "She's scared," he said.

Brandi Gussow was advised by her attorney not to talk to the media, her father said.

A friend who walked along I-40 with Shawn Gussow that night told police the teen was "running out in front of vehicles," according to a Metro Police report. The friend told police that Shawn Gussow took four or five hits of acid and said he wanted to die, the report said.

Metro Police said Brandi Gussow gave LSD to her brother in Williamson County before the two and an adult uncle and some friends went to Nashville to see a concert downtown.

Brandi Gussow was arrested last month and charged as a juvenile with second-degree murder. She was 17 at the time of her brother's death, but her case was transferred to Williamson County criminal court last week. If she is indicted by the Williamson County grand jury when it meets next month, she will be tried as an adult. She remains free on bond.

Gussow is being charged under a section of the second-degree murder statute that covers "unlawful distribution of any Schedule I or Schedule II drug when such drug is proven to be the proximate cause of death of the user."

Williamson County prosecutors say they're sending a message.

"To anyone that is going to distribute a Schedule I or Schedule II drug — that message is that if somebody dies from their illegal distribution from the drug, they will be prosecuted," said Williamson County Assistant District Attorney Matt Colvard.

Colvard said the case had to be prosecuted because of the death involved, even if it was Gussow's brother.

"If she'd shot her brother with a shotgun, should we have not prosecuted her for that?" Colvard said. "Just because it's her brother, should we not prosecute her?"

For Williamson County officials, the law is very clear: Brandi Gussow is accused of giving her brother a drug that caused his death.

Colvard said he could not find another case in Tennessee in which a sibling or friend was charged under this particular section of the second-degree murder statute.

Nashville attorney David Raybin, who helped write the part of the Tennessee criminal code that deals with such crimes, said the law was designed to prosecute drug dealers and for people who distribute drugs to someone who overdoses.

"This seems more like a casual exchange of drugs between children is what we've got here, but I don't think that statute was designed to deal with that," Raybin said.

Raybin said prosecutors also must show that Gussow was aware there was a high risk that her brother could die from using the drug.

"The burden on the prosecutor is enormous," Raybin said. To meet the standard of second-degree murder "she has to know and be aware of the high risk that he would die from handing him the drug," he said.

"So, she may have been irresponsible in giving him the drugs, but I don't know that she could recklessly foresee that he could die in this, particularly since he didn't die from an overdose."

Raybin said the actions Gussow is charged with sound more like they meet the definition of criminally negligent homicide. If the case goes to trial, he said, the jury will have the option of convicting Gussow of that lesser charge.

The difference is significant. Punishment for second-degree murder is 15-25 years without parole.

Punishment for criminally negligent homicide is one to two years.