

CASES ON ACTIVE SHOOTERS

McLean v. Pine Eagle Sch. Dist., No. 61, 194 F. Supp. 3d 1102 United States District Court of Oregon 2016

FACTS: A school held an active shooter drill while only teachers were at the school on a work day. Two masked men came in with firecrackers that were lit in the hallway and .22 handguns that were loaded with blanks. One of the men ran into the plaintiff's classroom and fired a blank at her and said, "You're dead". The man ran out immediately. This was a drill put in place by the school, but the school failed to notify the teachers to make it seem more realistic.

PROCEDURAL HISTORY: Plaintiff brought a deprivation of constitutional rights claim along with two state common law claims of IIED and civil assault. The defendants moved for summary judgement. The court granted the motion in part and denied the motion in part.

HOLDING: The court held that the plaintiff failed to show that a constitutional right had been deprived from her, therefore the claim of a constitutional violation was denied. But the court held the Plaintiff could seek damages for IIED as well as Civil Assault.

ANALYSIS: When performing active shooter drills, do not do this method of practice. Due to the fact that none of the participants were notified of the situation, the claim for IIED was not unfounded.

Wagner v. Planned Parenthood Fed'n of Am., Inc., 2019 COA 26 Colorado Court of Appeals 2019

FACTS: Robert Dear drove his truck with multiple weapons to a planned parenthood in Colorado Springs that was operated by Planned Parenthood Rocky Mountain and a member of Planned Parenthood Federation of America. Dear began shooting multiple victims and was in a lengthy gun battle killing an officer in the process.

PROCEDURAL HISTORY: Plaintiffs' claim against PPRM asserted that they were invitees under Colorado's Premises Liability Act (CPLA), section 13-21-115, C.R.S. 2018. Plaintiffs also filed a common law negligence claim against PPFA, asserting that PPFA controlled PPRM.

HOLDING: Summary judgement was affirmed in favor of PPFA due to the fact that the trial court found that PPFA merely exercised discretion and not control over PPRM, and that it was not the owner or possessor of the land associated with the PPRM clinic. There is record support for those findings. Hence, the court did not err in concluding PPFA owed no duty to plaintiffs and in granting PPFA's motion for summary judgment against plaintiffs. On the issue of summary judgment in favor of PPRM, the court reversed due to the fact that the legislature has determined, by enacting the CPLA, that landowners do have certain responsibilities to their invitees. A jury may determine that PPRM fulfilled those responsibilities. We merely conclude the trial court erred in determining *as a matter of law* that PPRM's "contribution [was] infinitesimal as compared to Robert Dear's shooting spree," and that "a mass shooting at PPRM, involving several weapons and improvised bombs" had such a predominant effect that it

prevented PPRM's conduct from becoming a substantial factor, and in granting PPRM's motion for summary judgment on that basis.

ANALYSIS: While the claim against the PPFA was dropped due to them just being affiliated with PPRM, the summary judgement in favor of PPRM was reversed. The court determined that it is to be up to a jury if PPRM fulfilled its duty of reasonable care in protecting its invitees.

Torbit v. Balt. City Police Dep't, 231 Md. App. 573 Court of Special Appeals Maryland

FACTS: A fight erupted outside of a nightclub in Baltimore in which Police had already responded to. The fight eventually evolved into one man shooting other patrons outside the nightclub. The man was eventually shot outside the nightclub by Baltimore PD. The man turned out to be a member of Baltimore PD.

PROCEDURAL HISTORY: The court is asked to determine whether the Police Department, the Club, and an adjoining parking lot's owner and operator may be liable for actions prior to the shooting. The court is also then asked to determine whether the trial court erred in granting judgment in favor of the four police officers who fired their guns at the shooter.

HOLDING: The court affirms that the PD, club, and adjoining parking lots owner and operator may not be liable for actions prior to the shooting. The shooting is not foreseeable in the chain of action as a nightclub owner. Even if Select knew of crime in the area, knew that the nightclub was overcrowded, knew that the nightclub was over-promoted, and failed to hire adequate security, it could not foresee that Torbit, a plainclothes BPD officer, would fire his

weapon in a nearby parking lot. Appellees generally argue that the officers acted reasonably in response to an active situation. The trial court found that appropriate deference must be given to police—especially when they are making "difficult and extremely quick decisions in split second circumstances of high stress and of an emergency nature"—and therefore entered judgment in favor of the four police officers.

ANALYSIS: In this situation, while the nightclub was aware of the crime ridden area, as well as the overcrowding and inadequate security, the court found that the shooting was not foreseeable by the nightclub. The PD in their response to this situation as well was found to not be negligent due to the fact that the trial court seems to give deference to the police in an active shooter situation.

McKown v. Simon Prop. Grp., Inc., 182 Wn.2d 752 Supreme Court of Washington

FACTS: Dominick S. Maldonado walked into the Tacoma Mall and opened fire on shoppers and mall employees, injuring seven people. Maldonado wore a dark trench coat concealing a MAK-90 rifle and an Intratec Tec-9 pistol and carried a guitar case filled with ammunition. 1 Excerpts of R. at 18. Brendan McKown, an employee at one of the retail stores, tried to stop Maldonado but was shot and wounded. After shooting McKown, Maldonado took several hostages before finally surrendering to the police. At the time of the shooting, there were four unarmed security guards on duty and no security cameras. *Id.* at 19-20. While the mall had an intercom system, it was inaudible and inaccessible on weekends, and the security guards were never trained to use it.

PROCEDURAL HISTORY: McKown brought a negligence action in state court against Simon Property Group Inc., alleging, in part, that Simon failed to exercise reasonable care to protect him from foreseeable criminal harm. Simon filed a motion for summary judgment, asserting that the shooting was unforeseeable and that any negligence by Simon was not a proximate cause of McKown's injuries. The trial court found that the evidence raised a genuine issue of material fact as to whether the shooter's criminal conduct was reasonably foreseeable. On reconsideration, the trial court vacated its holding and granted Simon's motion for summary judgment. The ninth circuit is inquiring on whether proving similar acts of violence is the only way for a plaintiff to establish a case as well as if a plaintiff must show these past incidents.

HOLDING: In answer to the Ninth Circuit's inquiry, proving acts of similar violence is not the only way for a plaintiff to establish a duty as provided in the Restatement. Prior history of violence is really the only basis for liability that the parties meaningfully address and the only one that the Ninth Circuit has asked to clarify. In answer to the court's other question, they held that where a landowner's obligation to protect business invitees from third party criminal conduct arises from past experience, the plaintiff must generally show a history of prior similar incidents on the business premises within the prior experience of the possessor of the land.

ANALYSIS: In this circumstance, the main way to establish liability in the eyes of the court is to show that prior actions have occurred that could lead to foreseeability. (Prior shootings at the mall, along with prepared media statements for shooting.)

Rose v. Martin's Super Mkts. L.L.C., 120 N.E.3d 234 Court of Appeals of Indiana

FACTS: Shawn Bair entered the Store and proceeded to walk around without a basket or a cart. Bair retrieved only a single bottle of soda, but he did stop to ask two Store employees where another item was located. He primarily talked or texted on his phone as he walked the aisles. Such behavior was not unusual for Bair, who had visited the Store on several other occasions. Approximately forty minutes after his arrival, Bair pulled a gun from beneath his coat and shot and killed Krystal Dikes, a Store employee, as she stocked shelves in aisle 3. Jodi Beaver, another Store employee, came to investigate the commotion and found Dikes on the floor. As Beaver fled toward the front of the store, Bair shot at her but missed. Bair continued walking the store, stopping at the end of aisle 17. Godfread was at the opposite end of aisle 17 with her back to Bair. Bair shot her in the back, and she fell to the ground. As Godfread tried to sit up, Bair walked to her and shot her in the head at point-blank range, killing her. Sixty-four seconds had elapsed from the first shot. Dan Zimmer, a Store employee working security/loss prevention that night, was at the Store's entrance when he heard the first shot. As he ran toward the sound, Beaver rounded a corner running toward him, yelling, "He's shooting" Zimmer turned back, ushered everyone at the front of the store outside, and called 911. Police arrived within two minutes and forty-three seconds of Bair's first shot. Bair was shot and killed by police roughly five minutes after he had begun shooting.

PROCEDURAL HISTORY: The Estate filed this negligence action against the Store on January 13, 2016, alleging the shooting was foreseeable and that the Store had a duty to take action to protect Godfread after the shooting began.

HOLDING: BEFORE THE SHOOTING: The store, while is held to a certain standard of duty to protect its customers, could not foresee that this customer would begin shooting other customers and therefore owes no duty to the plaintiff. AFTER THE SHOOTING BEGAN: Here, the Store had knowledge for a brief period of time that a person in the store was shooting a gun but had no knowledge of Godfread's injury until it was too late to offer her assistance. With no knowledge of Godfread's injury, the Store had no duty to take action to prevent exacerbation of those injuries.

ANALYSIS: Ultimately, it was not reasonably foreseeable for a grocery store to expect death by gunfire to befall a customer and therefore, the Store had no duty to Godfread prior to the shooting. And, because the Store did not have knowledge of Godfread's injury in time to offer her assistance, the Store had no duty to protect her from exacerbation of her injuries.

**HP CASES and EXPERTS INC CASES (AROSE FROM
SAME INCIDENT) Halmon-Daniels v. Experts, Inc.,
2016 U.S. Dist. LEXIS 125235**

FACTS: At approximately 8:00 a.m., Aaron Alexis, a civilian contractor working as a computer technician at the Navy Yard, entered Building 197 using a valid temporary access card and headed to his workstation in the fourth floor. Unknown to anyone, Mr. Alexis had a concealed sawed-off shotgun and ammunition in his backpack. He entered a restroom on the fourth floor, pulled out the gun, and assembled it. As he came out, he opened fire indiscriminately. Mr. Alexis continued his carnage through various floors of the building until law enforcement officers fatally shot him on the first floor at 9:25 a.m. The shooting resulted in twelve deaths and four non-fatal injuries.

PROCEDURAL HISTORY: Before the Court are nine related lawsuits arising out of the Navy Yard shooting. Plaintiffs are the personal representatives of the estates (or surviving family members or heirs) of seven decedents, a survivor seriously injured by Mr. Alexis, and a survivor who was a witness to the shooting. Plaintiffs assert a combination of negligence and intentional tort claims against HP Enterprise Services, LLC (HPES), which provided information technology services to the U.S. Navy as a government contractor, and The Experts, Inc. (The Experts), which was an HPES subcontractor and Mr. Alexis's employer. In addition, three of the nine cases also include claims against HBC Management Services, Inc. and The Hana Group, Inc. (collectively HBC), which provided security services at Building 197 of the Navy Yard.

HOLDING: The Court will grant in part and deny in part the motions to dismiss filed by HPES and The Experts. The Court will grant HBC's motion to dismiss. Only Plaintiffs' claims of negligent retention and supervision against HPES and The Experts will remain and proceed to discovery. The Court holds that Plaintiffs' claims present a justiciable question and that it has jurisdiction to address the merits of these Complaints. Accordingly, Plaintiffs' claims of negligent retention and supervision shall proceed to discovery so that the parties will have a more detailed factual foundation for their claims and their allegations of foreseeability. In addition, the OSHA-based claims of these Plaintiffs lack merit because OSHA was designed to mitigate and prevent industrial accidents and occupational diseases, not violent criminal conduct. Since the purpose of NISPOM was not to protect individuals from violent crimes at the workplace, Plaintiffs' negligence claims under NISPOM will be dismissed. Because neither the text of ISA nor its legislative history indicates a purpose of preventing violent criminal conduct in the workplace, the Court will dismiss those claims based on ISA. The fact that an employee's work "afforded him an opportunity to" commit the crime is "insufficient to make [an employer] vicariously liable," without regard to the theory of liability. Accordingly, the Court holds that HBC did not owe Plaintiffs Kohler, Zagami, and Jacobs a duty to protect them against the unforeseeable criminal acts of Mr. Alexis.

SUMMARY/ANALYSIS: All claims against Defendants were dismissed, with the exception of: (1) Plaintiffs' claims against HPES and The Experts for negligent retention and supervision of Mr. Alexis; and (2) the claims of Plaintiffs Kohler, Ridgell, Zagami, and Jacobs against HPES for

negligent retention and supervision of The Experts. In other words, retaining a violent employee with a history can cause a form of negligence.