

Negligence in the Sale and Use of Weapons

A great debate is going on in our country right now. There are those who say that tort lawyers should be turned loose on the gun manufacturing and gun sales industry. Others say “no” and have received protection for gun manufacturers and, in some states, users as well. In Pennsylvania, outside of the manufacturing context, the debate goes on.

An interesting case in that argument over tort liability for injuries and damages from gun use is *George Rogers vs. Thomas*, 2021 Pa. Super. LEXIS 291 (May 11, 2021) (McLaughlin, J.) Lloyd Thomas (“Lloyd”) shot and killed Joshua Rogers and Gilberto Alvarez (collectively, “Decedents”) in February 2012, while they were on property belonging to Lloyd’s father, Haydn Thomas (“Haydn”). Lloyd was charged criminally and a jury found him guilty in January 2014 of voluntary manslaughter. The administrators of Decedents’ estates – *i.e.*, the Rogers Estate and the Alvarez Estate (collectively, “Appellants”) – brought civil suits against Lloyd, Hadyn, and a gun shop on Haydn’s property, the Outdoorsman, Inc. (“The Outdoorsman”) (collectively, “Appellees”). Although the suits were initially in different counties, they were coordinated in Susquehanna County, and the Susquehanna County court consolidated them. At trial, the court entered a directed verdict in favor of Hadyn, and after the jury rendered a defense verdict, it entered judgment in favor of Lloyd and the Outdoorsman. This appeal followed.

The appellate court concluded that the trial court erred in submitting to the jury the question of whether Lloyd was negligent. However, according to the Superior Court, it did not err in permitting the jury to determine whether the Outdoorsman was liable; directing a verdict in favor of Haydn; allowing the jury to determine whether the Decedents were comparatively negligent; making certain evidentiary rulings; or consolidating the cases. As to the coordination of the cases, the Superior Court held that Appellants waived their challenge by failing to lodge a timely appeal from the coordination order. The Superior Court thus vacated the judgment entered in favor of Lloyd and the Outdoorsman, affirmed the judgment entered in favor of Haydn, and remanded for a new trial against Lloyd and the Outdoorsman.

A key component of this case is that the jury in the criminal case found beyond a reasonable doubt that Lloyd intentionally shot Appellants. He believed that he had to fire the shot in self-defense, but his belief was unreasonable. See 18 Pa.C.S. § 2503(b) (“A person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 of this title (relating to general principles of justification), but his belief is unreasonable”). The Superior Court ruled Lloyd was estopped from arguing that he did not intentionally shoot Appellant and also estopped from arguing that he had a reasonable belief that such action was necessary. This view of the consequence of the finding in the criminal case would prevent a finding in the civil case that Lloyd acted in a “reasonably careful manner to avoid injuring or harming or damaging others.” *Rogers v. Thomas, supra*, at *18. Accordingly, the Superior Court found it to be error to permit the jury to determine whether Lloyd was negligent.

To establish that Haydn was liable, Appellants were required to prove that Haydn had control over the firearm and that Haydn knew or should have known that Lloyd intended to create an unreasonable risk of harm. See Restatement (Second) of Torts § 308. To establish the Outdoorsman was liable, the Superior Court concluded that Appellants were required to prove that Lloyd was an employee and was acting within the scope of his employment when he shot Appellants. *Costa v. Roxborough Mem. Hosp.*, 708 A.2d 490, 493 (Pa. Super. 1998) (noting "employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment"). Therefore, the appellate court determined that Appellants needed to prove additional facts, beyond Lloyd's negligence, by a preponderance of the evidence to establish Haydn and/or the Outdoorsman were liable.

The Superior Court ruled that in a new trial, the jury must be informed that Lloyd was, in fact, negligent as a matter of law. With this finding, a jury could reach a different result as to the Outdoorsman than it did in the first trial, that is, it could find that Lloyd was an employee of the Outdoorsman and acting within the scope of his employment when his negligence occurred. Therefore, although the Superior Court declined to find that the Outdoorsman was liable as a matter of law, it concluded that a new trial was necessary to determine whether the Outdoorsman was vicariously liable.

However, the Superior Court found that the trial court did not err in entering a directed verdict in favor of Haydn. Therefore, Haydn's liability would not be contested in a second trial.

In addition, the trial court had concluded that because the issue of comparative negligence was not before the criminal jury, the civil jury should be permitted to determine whether the Decedents were comparatively negligent. The Superior Court agreed with that proposition.

Causation was still at issue in the civil case. Therefore, it was an open question, according to the Superior Court, as to whether the Decedents' actions were a substantial factor in causing the harm. Hence, whether Lloyd's liability should be reduced by any negligence of the Decedents was properly before the jury. The Superior Court concluded that the trial court did not err in denying the motion to preclude evidence of the Decedents' actions on the day in question.

Appellants also challenged several evidentiary rulings by the trial court. The trial court concluded that there was no evidence that Lloyd was "feeble-minded" or had the mental capacity of "a young child." *Rogers v. Thomas, supra*, at *27. The Superior Court agreed. Even if the Outdoorsman owned the firearm, Appellants did not present sufficient evidence to establish Lloyd had the right to possess or use the firearm only by consent of Haydn, or that Haydn knew or should have known that Lloyd intended to or was likely to use a firearm to create an unreasonable risk of harm to others. See Restatement (Second) of Torts § 308.

The Superior Court also found that the trial court did not err in excluding evidence of the Decedent's prior bad acts, but admitting evidence of chronic drug use.

As to the consolidation decision, it was upheld by the Superior Court as a proper exercise of the trial court's discretion. Only a small amount of evidence differed between the two cases and then only in the damages portion of the trial.

The Judgment entered in favor of Haydn was affirmed. Judgment entered in favor of Lloyd and the Outdoorsman was vacated.

Handy bullet points:

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- Lloyd shot and killed Rogers and Alvarez.
- They were on property belonging to Lloyd's father, Haydn.
- Lloyd was found guilty of voluntary manslaughter in the parallel criminal action.
- Civil suit against Lloyd, Haydn and gun shop on Haydn's property.
- Trial court entered a verdict in favor of Haydn, and after a defense verdict it entered judgment in favor of Lloyd and Outdoorsman.
- Trial court erred in submitting to jury the question of whether Lloyd was negligent. Negligence would be included within the criminal verdict.
- Trial court did not err in permitting the jury to determine whether Outdoorsman was liable or in directing a verdict in favor of Haydn.
- Lower court did not err in permitting the jury to determine whether decedents were comparatively negligent.
- To establish Haydn was liable, Appellants had to show that Haydn had control over the firearm and knew or should have known that Lloyd intended to create an unreasonable risk of harm.
- To establish Outdoorsman was liable, appellants had to prove that Lloyd was an employee and was acting within the scope of his employment when he shot Appellants.
- In a new trial, jury will be informed that Lloyd was negligent.
- With this finding, the jury could reach a different result as to Outdoorsman; it could find that Lloyd was an employee of Outdoorsman and acting within the scope of his employment, and Outdoorsman was vicariously liable.
- Appellants did not present sufficient evidence to establish that Lloyd had a right to possess or use a firearm only by the consent of Haydn or that Haydn knew or should have known that Lloyd intended or was likely to use a firearm to create an unreasonable risk of harm to others.
- Trial court did not err in directing a verdict in favor of Haydn. Therefore, his liability will not be assessed in a second trial.

The debate goes on in Pennsylvania as to liable for use, abuse, and supervision concerning firearms. This case of *Rogers vs. Thomas* is not certainly not the last chapter.

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