

PALM BEACH/PASCO

FACTS & ALLEGATIONS In 2005 at a Palm Beach County condominium complex, plaintiff Albert Rock, a painter in his 50s was shot by James Watson. They both lived in the condominium complex. Watson was arrested. He was acquitted on almost all criminal charges including attempted murder on March 19, 2008. The only charge he was convicted on was unlawful discharge of a firearm.

Rock sued Watson for battery. Initially, Watson pleaded the Fifth Amendment at the civil trial because the criminal trial was still ongoing. After the criminal trial was completed, Watson successfully petitioned the civil court to allow him to testify on liability in this case. Rock stated that he was renovating a unit when he had an altercation with Watson in front of an elevator. Rock stated that Watson pulled out his licensed .32 caliber pistol and shot him without provocation.

The two men had an ongoing hatred of one another. Watson claimed that his son had an affair with Rock's wife before she married the plaintiff, and this was the cause of their hatred. Rock denied that this ever took place.

Watson, a Korean War Veteran and a senior citizen, stated that Rock is a large man who participates in amateur body building contests. According to Watson, Rock knocked him down by thrusting his body backwards into him. Watson stated that Rock brandished a 7-inch knife, leaving him no choice but to defend himself. Watson stated that the parties were close together when the shooting occurred.

Rock stated at the criminal trial that he had no knife. At the civil trial, Rock stated that the knife was a tool he was using in the renovation, and it was resting on top of a box.

An issue raised at trial was Rock's use of testosterone shots. The plaintiff's doctor claimed it was for erectile dysfunction. Defense counsel pointed out that the plaintiff's doctor's records for the last five years were missing, so no one could determine why the testosterone was taken.

Defense counsel also stated that Florida statutes state that one does not have the duty to retreat if they are threatened in a place where they are legally allowed to be.

INJURIES/DAMAGES *gunshot wounds; scar and/or disfigurement, body*

Rock was shot in the left chest, and the bullet exited his right shoulder. He was taken to the emergency room. Several months later Rock complained of chest discomfort, and he underwent surgery to have bullet fragments removed. He has some scarring. Rock sought about \$500,000 in total damages.

RESULT The jury rendered a defense verdict, finding that no battery was committed.

TRIAL DETAILS Trial Length: 4 days
Trial Deliberations: 3 hours
Jury Vote: 6-0
Jury Composition: 5 female, 1 male

POST-TRIAL The parties have agreed to let the final judgment stand.

EDITOR'S NOTE This report is based on information provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

—Stephen DiPerte

PASCO COUNTY

HOTEL/RESTAURANT**Negligent Security — Wrongful Death****Man strangled to death in late-night fight at McDonald's**

VERDICT \$1,500,000
ACTUAL \$1,000,000

CASE Cathy Makowski, as the Natural Parent and Personal Representative of the Estate of Anthony Makowski, deceased, and Wayne Makowski, as the Natural Parent v. Brickman Inc. d/b/a McDonald's and B&B Cash Grocery Stores Inc., No. 51-2006-CA-1504-ES

COURT Pasco County Circuit Court, 6th, FL
JUDGE Susan Gardner
DATE 6/24/2009

PLAINTIFF ATTORNEY(S) Paul A. McKenna, McKenna & Obront, Miami, FL
Curt D. Obront, McKenna & Obront, Miami, FL
Tiffany McAuley, Kelly Law Group, P.A., Dade City, FL

DEFENSE ATTORNEY(S) F. Bryant Blevins, Butler Pappas Weihmuller Katz Craig LLP, Miami, FL
Stephen Ngo, Butler Pappas Weihmuller Katz Craig LLP, Miami, FL

FACTS & ALLEGATIONS At 4 a.m. on April 24, 2005, plaintiff Anthony Makowski, a 21-year-old college student, was strangled to death during an altercation with a fellow Land O'Lakes McDonald's patron in the exit of the restaurant's parking lot. Makowski was allegedly approached by Martin Robles-Taylor, 25, who was on leave from military duty. He waved a flashlight at Robles-Taylor. Robles-Taylor's companion, who had been seen with a beer bottle in his hand in the restaurant's drive-through lane, allegedly threatened another patron who was with Makowski at the time of the incident.

Cathy and Wayne Makowski, Anthony Makowski's parents,

sued Brickman Inc. operating McDonald's and B&B Cash Grocery Store Inc., the owner of the shopping center, for premises liability, negligence and negligent hiring. The estate claimed that but for the defendants' failure to correct known dangerous conditions, Makowski would not have been killed.

Counsel for the estate produced testimony and evidence that both the area and the Pasco Plaza Shopping Center where the plaintiff was killed had a history of violent or potentially violent crimes. In the four years preceding the attack, 700 calls to 911 had originated from the shopping plaza. McDonald's employees hesitated for approximately five minutes while the altercation ensued. Once called, the police arrived at the scene in less than one minute.

Counsel claimed that the defendants were aware that there had been multiple instances of revelry, drunken behavior and fights. Just one week prior to Makowski's death, McDonald's employees had placed an emergency call to the police when patrons threatened to kill each other.

Additional evidence was presented to the jury regarding the lack of coordination within upper management of the property owner regarding security issues at the plaza. The manager of the property division testified that the person in charge of loss prevention on the retail side of the operation was also in charge of premises security. The owner's loss prevention manager testified to the contrary. According to counsel for the estate, neither manager was aware that there had been such a high volume of emergency calls placed in the years leading up to the incident.

The defendants denied liability, arguing jointly that both parties were intoxicated and that the altercation could not have been prevented. No criminal charges were brought against Robles-Taylor, who claimed that Makowski initiated the altercation. Defense counsel contended that Makowski, who was 6 feet, 4 inches tall and weighed 270 pounds, should have been able to fend off the smaller Robles-Taylor. The defendants' security expert testified that the altercation was not foreseeable because there had been no prior similar violent felonies in the shopping plaza.

INJURIES/DAMAGES *death*

Makowski was strangled to death. The Makowskis testified as to their close relationship with their only child.

RESULT The jury found McDonald's 33 percent negligent, B&B 33 percent negligent and Makowski 33 percent negligent. It awarded \$1.5 million that was reduced to \$1 million.

CATHY MAKOWSKI \$750,000 survival

WAYNE MAKOWSKI \$750,000 survival

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 3.5 hours

**PLAINTIFF
EXPERT(S)**

Robert Sanderson, M.A., audiology, Poughkeepsie, NY
Donald Schultz, commercial security, Eustis, FL
Edward Willey, M.D., forensic pathology, St. Petersburg, FL

**DEFENSE
EXPERT(S)**

Gregg O. McCrary, security/premises liability, Fredericksburg, VA

POST-TRIAL On July 10, 2009, Judge Susan Gardner ordered a new trial, noting that she made an error by failing to have the name of Robles-Taylor on the verdict form. Plaintiff's counsel plans to appeal.

EDITOR'S NOTE This report is based on information provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

-Shannon Green

MOTOR VEHICLE

Bus — Stop Sign — Left Turn — Seat Belt

Teen sustained brain injury in crash with school bus

VERDICT \$2,579,791
ACTUAL \$1,676,864

CASE Mark Button and Robin Button individually and as parents and natural guardians of Marcus Butttton, a minor v. Pasco County School Board, No. 51-2007-CA-004985-XXXX-ES

COURT Pasco County Circuit Court, 6th, FL
JUDGE Susan Gardner
DATE 7/27/2009

PLAINTIFF
ATTORNEY(S) J. Steele Olmstead, J. Steele Olmstead P.A., Tampa, FL

DEFENSE
ATTORNEY(S) R. Elliott Dunn, Jr., McClain Alfonson Meeker & Dunn, P.A., Zephyrhills, FL
Paul M. Meeker, McClain Alfonson Meeker & Dunn, P.A., Zephyrhills, FL

FACTS & ALLEGATIONS On Sept. 22, 2006, plaintiff Marcus Button, 16, a student, was a front-seat passenger in his friend's sedan that was heading east on State Road 54 in Wesley