



COURT OF APPEALS HOLDS NO RECOGNIZED CAUSE OF ACTION EXISTS UNDER MISSOURI LAW AGAINST GUN SHOP OWNERS FOR SALE OF A NON-DEFECTIVE LAWFUL PRODUCT

CAROLEE NOBLE, ET AL., AND JO ANN K. NIGLES, ET AL V. SHAWNEE GUN SHOP, INC.,
--- S.W.3D ---, 2013 WL 3661312 (Mo.App. W.D., JULY 16, 2013)

In an opinion issued July 16, 2013, the Western District of the Missouri Court of Appeals declined to extend what would have amounted to dram shop-type liability to a gun shop that sold ammunition and magazines to a purchaser who used a stolen credit card and later shot and killed two individuals.

This was a consolidated appeal of two separate wrongful death suits which were dismissed for identical reasons by the Jackson County Circuit Court. In both cases, the plaintiffs alleged the defendant gun shop was negligent in selling ammunition and magazines to an individual named David Logsdon who used a stolen credit card for the purchase. The credit card belonged to Logsdon's neighbor, who was found dead in her home and who Logsdon is suspected of killing. It was alleged that five days after purchasing the ammunition and magazines, Logsdon used those items in a shooting spree in a Kansas City parking lot, resulting in two deaths and several other injured persons. Logsdon was later shot and killed by police.

In both suits, the plaintiffs alleged that Logsdon's use of the neighbor's stolen credit card to purchase the ammunition and/or magazines should have alerted the gun shop that Logsdon's purchase presented a risk of serious injury to others. The plaintiffs both relied on the "negligent entrustment" exception to the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903, to circumvent the law's general prohibition against civil lawsuits directed to a manufacturer or seller of firearms and related products based on the criminal misuse of those items. The "negligent entrustment" exception, which is one of six possible exceptions to the law's civil lawsuit prohibitions, holds a seller can be held liable "when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others." 15 U.S.C. § 7903(5)(B). The Jackson County Circuit Court dismissed all claims for failure to state a claim upon which relief may be granted.

On appeal, the Western District found that the allegations of the petitions, in fact, did fall within the Commerce in Arms Act's definition of a "negligent entrustment" claim. Yet, it held the dismissals nevertheless must be affirmed because the allegations did not state a viable cause of action under Missouri law. The Commerce in Arms Act does not itself provide a private cause of action, thus not only were the plaintiffs required to qualify for one of the Act's six exceptions, but it was also necessary for them to state a claim under some recognized Missouri cause of action. "While the Act may exempt 'negligent entrustment' claims from mandatory dismissal under federal law, it does not affirmatively authorize or establish such claims – it simply does not extinguish them."

The plaintiffs admitted – and the Western District agreed – that Missouri law does not recognize a negligent entrustment claim against a product seller. Instead, plaintiffs argued the appellate court should recognize a claim against the gun shop based on general negligence principles for its "negligent sale" of the ammunition and/or magazines to Logsdon. The court, however, declined to recognize this "novel claim" for two reasons.



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First, though they tried to paint it as something else, plaintiffs were actually espousing a negligent entrustment claim for sale of a lawful product and, as plaintiffs had already admitted, such a cause of action does not exist under Missouri law. Plaintiff did not argue for a modification of the existing “negligent entrustment” law.

Second, plaintiffs’ attempt to cast this case as analogous to a dram shop case fails. Plaintiffs argued that, in a dram shop case, “an action may be brought against a bar owner if the bar owner serves alcohol to an underage or visibly intoxicated person, where the bar owner knew or should have known of the same and the patron leaves the bar and causes personal injury or death to a third person.” The Western District, however, noted dram shop liability as currently recognized in Missouri is purely statutory and thus of no application in this case. But, even if some semblance of a common-law basis for dram shop liability remains under Missouri law, it cannot be extended to a gun shop owner who does not sell any product for use or consumption on its premises. According to the court, dram shop liability is imposed in circumstances where the tavern operator has an opportunity to observe the patron’s behavior and consumption, thereby maintaining significant oversight and control over the patron’s use of liquor. A gun shop, by contrast, has no similar opportunity to observe and control a purchaser, and in this way, may be more analogous to a seller of packaged liquor for consumption off premises, for which Missouri courts have held no liability can be ascribed to the seller.

Finally, the court rejected plaintiffs’ contention that the ammunition and/or magazines sold were designed solely to cause significant human injuries, thereby making them defective in their intended use. The court noted that, while firearms are susceptible to unlawful use which can cause severe injuries, the sale of firearms and related products is legal and those products are capable of being used lawfully and safely. Thus, although a cause of action was not prohibited by the Commerce in Arms Act, the plaintiffs cannot state a cause of action against the gun shop based on a sale of a non-defective, lawful product for injuries caused by an unlawful action of a third party.

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