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## *Valentine v. On Target, Inc.*

### A Gun Retailer Does Not Owe a Duty to a Murder Victim when Its Stolen Handgun Is Used to Commit a Murder

By Jennifer Golub

The Court of Appeals of Maryland held that a gun retailer, from whose store a gun was stolen and used in the commission of a murder, owed no duty to the murder victim to prevent the theft and criminal misuse of the gun. *Valentine v. On Target, Inc.*, 353 Md. 544, 727 A.2d 947 (1999). To impose an indefinite duty on gun merchants to the general public, the court explained, would be tantamount to regulating the market, a responsibility reserved for the legislature. The court's holding was confined to the specific facts and allegations pled by the petitioner.

In July 1993, Edward Wendell McLeod and another stole several handguns from On Target, Inc. ("On Target"), a gun retailer in Anne Arundel County. In September of that year, Joanne Valentine ("Valentine") was murdered by an "unknown assailant" using one of the handguns stolen from On Target.

Vincent Valentine ("Petitioner"), personal representative, surviving spouse, and next friend of their children, filed a wrongful death suit against On Target in the Circuit Court for Anne Arundel County. Petitioner alleged that On Target breached its duty to the deceased in several ways, ranging from failing to properly train its employees to failing to properly secure the handguns.

The trial court granted On

Target's motion to dismiss for failure to state a claim pursuant to Maryland Rule 2-322(b)(2). The petitioner appealed to the Court of Special Appeals of Maryland, which affirmed the trial court's dismissal but on different grounds. The Court of Appeals of Maryland granted certiorari and affirmed.

The court of appeals began its analysis by narrowing the issue to whether On Target owed Valentine a duty based on the facts particular to the case at hand. *Valentine*, 353 Md. at 550, 727 A.2d at 950. For example, the court noted that the petitioner alleged that respondent owed a duty to exercise reasonable care in the display of handguns, yet Petitioner did not set forth how the handguns were displayed. *Id.* at 547, 727 A.2d at 948.

The court identified the applicable legal standard of care a plaintiff must set forth in a negligence complaint to be "reasonable conduct in the light of the apparent risk." *Id.* at 550, 727 A.2d at 950 (quoting W. PAGE KEETON ET. AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30, at 356 (5<sup>th</sup> Ed. 1984)). Likewise, sustaining a cause of action in negligence requires a "legally recognized duty" owed by the defendant to the plaintiff or to a group of plaintiffs. *Id.* at 549, 727 A.2d at 949.

The court explained that the policy reason for allowing a cause of action in negligence is to discourage or encourage specific behaviors by one person for the benefit of another. *Id.* at 550, 727 A.2d at 950. According to the court, no purpose is achieved if the creation of a duty does not benefit the plaintiff. *Id.*

In the instant case, the court applied two "concepts," which create the existence of a duty: "relationship or nexus of the parties and foreseeability." *Id.* at 550-51, 727 A.2d at 950. Foreseeability, the court stated, is the notion that one should not be liable for "unreasonably remote consequences." *Id.* at 551, 727 A.2d at 950 (citing *Rosenblatt v. Exxon*, 335 Md. 58, 77, 642 A.2d 180, 189 (1994)). The court expressed that Petitioner did not allege that On Target knew or should have known that guns would be stolen from the store or that an "unknown party" would obtain a stolen gun and use it to commit a crime. *Id.* The court explained that imposing a duty based on a general notion that it was foreseeable that guns would be used to commit crimes would equate to imposing a duty based on "an imprecise notion of a foreseeability of risk of harm to the public in general." *Id.* The court noted that other factors, such as intervening parties or circumstances, must be

considered before any and all foreseeable harm creates a duty. *Id.*

Relying on its previous decision in *Scott v. Watson*, which held that “a private person is under no special duty to protect another from the criminal acts of a third person,” the court concluded that one cannot be expected to owe a duty to the entire world to protect it from harm caused by third persons. *Id.* at 551-53, 727 A.2d at 950-51 (citing *Scott v. Watson*, 278 Md. 160, 166, 359 A.2d 548, 552 (1976)). Requiring a duty, such as that proposed by Petitioner, to an “indeterminate class of people, known and unknown” would create a “tremendous burden on shop owners while providing only a hypothetical benefit to the public at best.” *Id.* at 553, 727 A.2d at 951.

The court distinguished cases cited by Petitioner in support of his argument and noted that the cases were either factually distinguishable, or their rationales were not ones the court was prepared to recognize. *Id.* at 553-56, 727 A.2d at 951-52 (citing *Estate of Strever v. Cline*, 924 P.2d 666 (Mont. 1996); *Pavrides v. Niles Gun Show, Inc.*, 637 N.E.2d 404 (Ohio App.3d 1994); *Berly v. D & L Security Services and Investigations, Inc.*, 876 S.W.2d 179 (Tex.Ct.App. 1994)).

The court concluded that finding a duty in this case would create an improper cause of action. *Id.* at 556, 727 A.2d at 952-53. The court, however, noted that this holding did not mean that gun store owners can never be liable for negligent displays or sales of guns. *Id.* at 556, 727 A.2d

at 953. The court reiterated public policy as the basis for its decision and noted that to impose a duty on gun shop owners would, in effect, be regulating merchants, a role reserved for the legislature. *Id.*

Judge Raker, in her concurrence in which Chief Judge Bell and Judge Eldridge joined, agreed with the majority’s holding, based on insufficiency of the pleading. *Id.* However, she disagreed with the majority’s analysis that shop owners do not owe a duty to exercise ordinary care in securing, displaying, and selling handguns. *Id.* at 560, 727 A.2d at 955. Judge Raker explained that it is foreseeable that when a handgun is improperly secured it may be used in the commission of a crime, and therefore a duty should attach. *Id.* at 561, 727 A.2d at 955. She also noted that if shop owners knew they could be subjected to liability, they might exercise extra care in the sale of handguns. *Id.* at 565, 727 A.2d at 957.

The holding in this case reflects the divisive issue of who is to blame when innocent people are hurt by stolen guns. Petitioner alleged that On Target owed a duty to exercise reasonable care, yet Petitioner did not show how On Target breached its duty. This case is one of the first in Maryland in a national trend of suits against gun retailers and manufacturers. The impression given in this opinion by the Court of Appeals of Maryland is that under slightly different facts and pleadings, a duty to exercise reasonable care may be found. Judge Raker’s concurrence reads more like a dissent and, in the

near future, the court may find that her statements resonate public opinion and the growing trend regarding liability when guns stolen from retailers are used in the commission of a crime.