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# Recent Developments: Todd v. Mass Transit Administration: Common Carriers Have a Duty to Prevent Forseeable Assaults upon Passengers and to Aid Passengers in Danger

Brian Casto

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**Todd v. Mass Transit Administration:  
Common Carriers Have a Duty to Prevent Foreseeable Assaults upon Passengers  
and to Aid Passengers in Danger**

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By: Brian Casto

The Court of Appeals of Maryland held common carriers have a duty to prevent foreseeable assaults upon passengers and to aid passengers in danger. *Todd v. Mass Transit Admin.*, 373 Md. 149, 816 A.2d 930 (2003). The court, in holding a duty to come to the aid of a passenger in danger, gave legal effect to dicta in a case decided ten years prior. *Id.* at 166, 816 A.2d at 939.

Kenneth Todd (“Todd”) was a passenger on a Mass Transit Administration (“MTA”) bus on the evening of July 4, 2000, when a group of fifteen-to-twenty juveniles boarded the bus. As the juveniles made their way to the rear of the bus where Todd was seated, they harassed other passengers with crass and threatening language. After approximately five minutes, one of the juveniles struck Todd in the head. Todd confronted the juvenile and was attacked by the entire group. During the attack, another passenger alerted the bus driver to the altercation. The bus driver took no action, electing to drive the bus over a bridge before pulling to the side of the road and engaging the panic button to alert police. The juveniles quickly fled the bus after it came to a stop. The attack left Todd with numerous

bruises, cuts, and abrasions.

Todd filed a negligence claim against MTA in the Circuit Court for Baltimore City. His claim alleged MTA was negligent in failing to prevent the attack and failing to come to his aid after the driver learned of the attack. The circuit court granted MTA’s motion for summary judgment. Todd appealed to the court of special appeals. However, before that court could hear the case the court of appeals granted certiorari.

The court first addressed whether the MTA had a duty to take affirmative steps to prevent the assault. *Id.* at 159, 816 A.2d at 935. The court relied on a long-established rule requiring common carriers to protect their passengers from assault when it is known, or should be known, that an assault is imminent and the knowledge of such assault is acquired in time for the carrier to take preventative action. *Id.* (discussing *Tall v. Balt. Steam Packet Co.*, 90 Md. 248, 44 A. 1007 (1899)). The court stated whether facts in this case established that the two conditions of the rule were met was a question for the jury. *Id.* at 159, 816 A.2d at 936.

The court held the requirement of knowledge was satisfied when the carrier knew, or should have known, of the assailants’ reckless,

violent, and disorderly behavior prior to the attack. *Id.* at 162, 816 A.2d at 937. The court concluded the facts of this case, including the size of the group and its behavior toward other passengers, should have alerted the bus driver of the possibility of an assault. *Id.* The court further held the five minutes from the time the juveniles entered the bus until the assault on Todd was a sufficient length of time in which the bus driver could have taken preventative measures. *Id.* at 163, 816 A.2d at 938.

The court next considered the question of whether a common carrier owes a duty to aid a passenger under attack. *Id.* at 164, 816 A.2d at 939. The court began its analysis by recognizing the general principle that “a person has no legal duty to come to the aid of another in distress.” *Id.* (quoting *Southland Corp. v. Griffith*, 332 Md. 704, 716, 633 A.2d 84, 90 (1993)). An exception to that rule was created by the *Southland* court, where a shopkeeper breached his duty of care to a customer when he failed to call the police after learning the customer was under attack. *Id.* at 164-65, 816 A.2d at 939. In reaching its holding, the *Southland* court adopted Section 314A of the Restatement (Second) of Torts (1965), which states, “an employee

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of a business has a legal duty to take affirmative action for the aid or protection of a business invitee." *Id.* at 165, 816 A.2d at 939 (citing *Southland*, 332 Md. at 719, 633 A.2d at 91). *Southland* also commented, in dicta, that a common carrier has a duty to render aid to a passenger under attack. *Id.*

In the instant case, the court noted Section 314A of the Restatement, from which *Southland* was derived, expressly includes the relationship between common carriers and passengers as one creating a duty to render aid when a passenger is in peril. *Id.* Therefore, the court concluded it reasonable to extend the "business owner's duty" announced in *Southland* to common carriers. *Id.* If the carrier had knowledge of the danger and aid could have been provided without placing the carrier's employee in the path of harm, then the carrier had a legal duty to take affirmative action to protect its passengers. *Id.* at 166, 816 A.2d at 939.

Whether MTA breached this duty to Todd was a question for a jury. *Id.* at 169, 816 A.2d at 941. The court concluded a reasonable jury could find the bus driver failed to take action that could have protected Todd. *Id.* at 168, 816 A.2d at 941. Thus, the trial court's grant of summary judgment in favor of MTA was inappropriate. *Id.* at 169, 816 A.2d at 941.

Common carriers have a duty to prevent foreseeable assaults upon passengers and to aid passengers in danger. Common carriers

doing business in Maryland must now modify their operating procedures and train their employees on when and how to aid a passenger in danger. The holding mandates that common carriers have a duty to protect passengers provided an employee is not called upon to put himself or herself in the path of danger. This standard will require common carriers to walk a fine line between discouraging their employees from intervening, in the interest of their own welfare, and encouraging intervention to avoid liability for any harm to passengers in peril. Attorneys advising common carriers doing business in Maryland must assist their clients in drawing this line.

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