

**EXPERT REPORT OF RANDY ATLAS, PH. D., FAIA, CPP , 2016 MISC.
FILINGS LEXIS 10612**

CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT OF FLORIDA, ORANGE COUNTY

Case No. 2012-CA-013326-O

April 8, 2016

Reporter

2016 MISC. FILINGS LEXIS 10612 *

Windom v. Hadied Family Limited Partnership

Expert Name: Randy Atlas, , Ph. D., FAIA, CPP

Text

[*1] Windom Walker Case Opinions for Randy Atlas Ph.D., FAIR, CPP

Incident Summary: According to the reviewed materials, on August 16, 2010, many persons went to Club Envy, a nightclub near International Drive. A fight broke out around 11:30 pm and the Club was closed around midnight, instead of the normal 3 am. Many of the patrons of the club went to start a "let out". A let out according to Det. Gribble, is when a group of people will leave a club and go to a random open parking lot, park their cars, turn up their music, dance, drink and carry on. Normally the police spread out to deter the let outs from happening, but if a club lets out early, how are the police supposed to know.

The Let Out first drives to a Chevron, then to a McDonalds, then to the 7-11 on McLeod. Det. Gribble thinks that the group was just driving down the road and chose the 7-11 because it was well lit, and had a huge parking lot. But, prior police incident reports, the testimony of Officer Woodyard, and calls for service, show that there was a history of large crowds gathering in the parking lot going to the 7-11 over several years in the late night hours, and that there were resulting disturbances.

Approximately **[*2]** 50 plus cars and loiterers take over the parking lot again. Clerks at the 7-11 did nothing to stop the cars blocking the lot. It is uncertain if the clerks call police when the first cars are arriving. The store clerks are serving the individuals coming in as customers. D. Green drove the silver Toyota Camry with D. Scott to the 7-11. At 1:15 shots ring out, as heard on interior video surveillance. The shooters leave off the site. D. Greene was the driver of the shooter's car, and D. Scott was the shooter of Connie Walker. Terrance Wade was next to Connie Walker on the curb in front of the store window, and ducked when the shooting began.

Det. Gribble stated that the parking lot was full of people. You could hardly drive or get around, after the shooting.

Police investigate and subsequently arrest and charge Greene and Scott with the murder.

Notice and Foreseeability: Prior to the shooting on August 2010 there were 20 plus incidents of crime and or let outs where the local kids take over a public parking lot and hang out. Incidents reported at 3747 S. Kirkman/ 5698 LB McLeod Road:

1. 12/20/05 8:10 pm Fight in the parking lot
2. 11/30/06 1:22 am Threats and assault with **[*3]** a deadly weapon
3. 2/3/07 1:10 am Personal robbery with knife
4. 10/19/07 3:09 am Group of girls in parking lot (PL) fight

5. 11/17/07 10:34 pm People loitering in the PL
6. 6/10/08 1:00 am Cars playing loud music in PL
7. 6/17/08 1:05 am 6-7 cars need to be cleared from the PL
8. 6/27/08 3:17 am 50 people in the PL need to be cleared
9. 7/4/08 2:52 am Crowd in PL shooting off fireworks (gas pumps?)
10. 7/18/08 3:27 am Persons loitering, crowd needs to be cleared
11. 8/1/08 3:15 am PL needs to be cleared
12. 8/8/08 3:03 am PL needs to be cleared.
13. 9/12/08 3:22 am 10-15 cars in PL, needs to be cleared
14. 10/3/08 3:03 am Need crowd control, cars cant get in or out
15. 10/17/08 3:03 am PL crowded, loitering refusing to leave. Noise complaint from neighbors about cars at 7-11
16. 11/7/08 3:05 am 50 plus cars in PL, need to be cleared
17. 11/21/08 2:51 am Numerous cars and people loitering in PL
18. 11/28/08 3:02 am Vehicles and people loitering in PL, needs clearing
19. 4/3/09 3:15 am 20 plus cars in PL, needs to be cleared
20. 4/17/09 3:06 am 50 plus cars in PL, needs to be cleared
21. 5/15/09 3:04 am Lots of cars, loud music. **[*4]** Needs to be cleared.
22. 11/29/09 11:03 pm Persons fighting in the PL
23. 6/4/09 3:01 am Persons in PL, general disturbance
24. 8/11/10 3:28 am Robbery of Clerk with knife in store
25. 8/16/10 1:15 am Shooting in PL, numerous cars and large crowd.

Other 7-11 Shootings (based on review of crime grids -- incident reports pending) at:

- . 4355 Silver Star Rd (2);
- . 901 South Orange Blossom Trail (2)
- . 938 West Colonial Dr. (4);
- . 4305 N. Pines Hills Rd. (2).

The Florida Convenience Business Security Act of 1992 calls for as minimum-security standards that window sign placement shall allow an unobstructed view of the sales transaction area from inside and outside the building. If there has been a previous murder, robbery, sexual battery, assault, and the business operates between 11 pm and 5 am the store must take on at least one of the following additional security measure:

- . At least two employees on the premise at all times;
- . A secured safety enclosure made of transparent polycarbonate;
- . A security guard or off duty law enforcement officer on the premises;
- . Locked premises with business conducted through an indirect pass through door or window. **[*5]**

The 7-11 on McLeod did have two employees, but was clearly aware they could and should have an off duty security or police officer, since there was an armed robbery on the premise prior to the shooting.

The 7-11 directives are for employee and customer safety. The 7-11 manual has the following highlights:

- . Staying Alert: Be aware of suspicious activity outside the store. Make sure sales counter can be seen clearly. Do not put up signs, posters that would block the view of the register from the inside or outside of the store.
- . Staying Safe: The safety of you and your customers is more important than money or merchandise.

. Loitering: Means hanging around the store inside or outside, without buying anything. Loitering is a serious problem. Take action when you first observe a potential problem develop. Do not wait until a group gets larger or violence occurs. See that "No Loitering" and "Parking limited to 15 minutes" signs are posted. Call the police, if the person keeps loitering.

. Parking Lot Problems: Situations that can occur: loitering, drug dealing, groups of teens, gangs, and consumption. Laws require that you take care of the problem at your store and in [*6] the parking lot when they occur.

. Employee Education and Awareness: Be aware of people who are loitering in the store's lot. Report them to the police with a description; do not leave the store.

. Loitering: If the group does not leave, tell them you will call the police, as the last resort. Do post no loitering signs.

. Working Safely: Under sales and merchandise, "Windows in front of the sales counter should not be blocked by signs or tall displays." Object 5- Keep windows and counters free of items that block your view. You need to be able to see all of the store inside and out. Object 4 -- Observe the parking lot open.

7-11's are allowed to hire security personnel in the form of off duty police officers. Other 7-11 Stores in Orlando area that had Off Duty Police Assignments were:

. 3355 LB McLeod Rd.

. 4355 Silver Star Rd.

. 901 South Orange Blossom Trail

. 4305 N. Pine Hills Rd.

. 938 West Colonial Dr.

7-11 Policy is to post signs no loitering, signs that customers can be in the parking lot no more than 15 minutes.

7-11 Policy -- no signs in the windows blocking view of the parking area, the pumps and from the outside in to the register.

7-11 [*7] Policy is to call police for loitering.

The McLeod 7-11 site, choose not to.

The time line as established by the 7-11 video tape is as follows:

1:00 am the video starts

1:05 - 1:06 two girls come in the store

1:08:07 One of the girls comes back in, Reggie goes to the door and looks out, takes no action.

1:10:13 Girl checks out and is joined by a second girl.

1:11:08 Girl comes back in a third time

1:14:36 You can hear music in the background. Reggie goes to the door and looks outside.

1:14:55 Reggie tells Valdez to call the police.

1:15:15 Two more girls come in

1:15:19 You can hear shots fired

1:15:22 3rd girl runs into the store screaming

1:15:30 More shots fired

1:16:46 Reggie goes to the door. Calls the police and store manager

1:17:57 First police lights seen

1:19:45 Police come into the store and asks for video

By allowing and encouraging the gathering of persons, it is reasonable to expect a fight, and assault, and escalate into a shooting, and murder.

The owner (after the shooting), Yousaf, in his deposition says that he does not have problems with large crowds of people gathering at night after the nightclub closes in his [*8] parking lot playing music and hanging out. He wanted the business. Hadied, also an owner, was totally unaware of any criminal activity on his property, fights, disturbances, requiring police to be called between 2005 -- 2010. He never hired security guards and never performed any security evaluations on the property.

For police to remove cars, someone from 7-11 has to call and ask Off. Woodyard to take action. He didn't receive any calls prior to the shooting to ask the crowd to disperse.

Employees called police before the shooting. The original call came in at 1:14 am based on the store video tape. Officer Woodyard arrived in a few minutes. Police arrived in 3 minutes. Manual Augusto was the manager on duty before the shooting. Augusto was never told in his training that having a large crowd was a safety hazard. He thought that a large crowd was good for the store and business because people are shopping. Augusto stated that is Clarify Hotline is called when something happens inside the store, not with the customers. It is for when there is missing money or someone in the store gets hurt. If something happened outside the store Augusto would turn it over to his supervisor. The [*9] manager felt there was no reason to call the police if there were 20 cars and 50 people in the parking lot unless there is violence. But, that suggests being reactive not proactive.

How can you prevent the likelihood of violence once the crowd had gathered and the site is taken over? Clerk Andrew Valdez, was the employee who called 911 before the shooting. Valdez states that the employees were trained to observe the parking lot. Valdez called 911 anytime he saw more than 5 cars loitering in the parking lot. The parking spaces filled and people milled around the pumps, the numbers just kept growing, within 30 seconds. He had never seen a crowd of 50 or more cars in their parking lot before. Valdez called other clerk Reggie from the coolers to help him watch the customers from shoplifting. Reggie told him to call 911. They could deal with 3-4 cars, but this was way more than 10 cars. Reggie never told Valdez that the let out occurred at least once a month. Valdez says he was trained to observe the parking lot for loitering, number of cars, anything that might be life threatening, and the crowd was screaming. Once the police arrived, the store was asked to provide a copy of the video. [*10]

Employee Sejour states in his deposition that people came to the 7-11 after the clubs let out almost every week. It is like a habit of the young people showing up in the parking lot. The first time it happened he didn't call the police, but quietly observed them, Then he told his manager who told him to call the police. When a large group of young people come in there are problems with them being overwhelmed and shoplifting occurring.

Opinions based on my education, experience with ASIS International, and training:

7-11 violated it's own policies of not having the windows clear and have natural surveillance of the parking lot from the store counter. 7-11 violated its own polices and practices by not having the signage that prohibits loitering and that customers cannot stay on site more than 15 minutes. The weekly let outs cannot be controlled by two clerks that are not able to even leave the inside of the store.

The 7-11 does nothing to provide store security until a customer is hurt. Calling the police doesn't stop the cars from coming and entering the site. Once the cars and people are on site and loitering and partying, then violence is foreseeable as the young people [*11] gather and engage in gregarious activities. Violence between groups of young people in a group environment unsupervised then becomes a foreseeable action.

According to Timothy Hall there cannot be signs or posters in security windows by the sales counter There should be no signs in the windows where the counter is located, and the money drawer, the drop safe, and providing clear view to the pumps and parking lot areas. This 7-11 had signs and posters blocking the view of the clerks outside the store to provide natural surveillance.

7-11 violated the FL Convenience store act by having its windows blocked from view of the counter, and because there had been a prior armed robbery just five days before the shooting, and fights in the parking lot, not hiring an off-duty police officer to work weekend nights for facility security.

Training of employees - according to Timothy Hall the employees are trained to call the hotline, and the manager, and the field consultant if they needed guidance. The training manual states that employees are to call police if they are having problems of loiterers. Hall was not aware of any history of large crowds gathering at the store despite the 20 [*12] plus police reports. The manager of the store encouraged the let outs as a source of business, despite the two employees having to deal with the challenge of total gridlock on the site, potential fights and noise problems, potential shoplifting binges from car patrons, and the increased threat of violence from the hyped up young people.

Hall states in his deposition that the decision to add security or not is based upon the history of that particular store, not based on an analysis of criminal activity in the surrounding area, or particular incidents that are occurring in other stores. Hall states that after the shooting the store hired Orlando Police to make associates and customers feel safe and more comfortable.

The store had within its right to hire off duty police to protect it's storefront from acts of crime or regular gathering of locals for let-outs. Timothy Hall stated in his deposition that 7-11's can have security guards or off duty police officers in their stores. The storeowners do pay for that service as an extra cost. The usual use of security is for product loss prevention -- shoplifting.

Had the store hired security off-duty police, the let out young people [*13] would not have used this site as a hanging out place. The shooting would not have occurred. There is no policy or procedure on how, and when to hire off duty police or security officers. It is arbitrary and not based on prior incidents, or crime risk, or customer or employee safety. There is no threshold of prior incidents or foreseeability that triggers additional security features at a store.

Had the clerks called police on earlier occasions, and demanded enforcement and arrests, the reputation of this 7-11 as a good place to gather would have been deterred, and there would have been no shooting.

Had the clerks been able to look through their blocked windows and seen the total gridlock, and insisted that loiterers leave, there would have been no shooting.

If 7-11 Inc. was aware of the crowd problem at the McLeod address parking lot, off duty police officer assignments was a reasonable deterrent response. In the realm of crime prevention through environmental design (CPTED), there are three approaches: natural, mechanical, and organizational. Under organizational CPTED strategies for organizational approach is having supervision or capable guardianship. The 7-11 acts as an [*14] attractive magnet, that creates, promotes, and allows out of control crowd behavior. Therefore, hiring security in the form of off duty police to manage the crowd is a reasonable security measure that serves as capable guardianship and proactively mitigates a group gathering.

Responding to a crowd control event is not the same as preventing it. It is the argument of being proactive versus reactive. To prevent an incident always trumps reacting to or responding to a situation, after the fact. Preventing a heart attack with statins or diet, is a lot better than calling 911 once a heart attack is starting to occur.

What is 7-11 doing to keep its patrons safe? Because of repeated let out gatherings at this 7-11 site, and the resulting security and crime challenges, the probability that a fight could occur was high, and a the probability of a fight or perceived conflict escalating to a shooting was very likely. This crime was foreseeable and more likely than not preventable, within a reasonable degree of criminological certainty.