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Florida Lawyers Are Using a Kitchen Knife From Publix to Underpin Premises Liability Suit

"This is not a little table knife. This is not a little butter knife. These are weapons and they should not be sold to children," the plaintiffs appellate counsel said.

By Raychel Lean | January 19, 2021



Andrew A. Harris of Harris Appeals in Palm Beach Gardens steered this lawsuit past a motion to dismiss. Courtesy photo.

A kitchen knife that was used in a deadly stabbing attack during a children's sleepover is now the centerpiece of litigation against Publix Super Markets Inc., which failed to dismiss allegations that it's liable for selling the murder weapon to a minor.

The litigation (https://drive.google.com/file/d/1T5ir2e_Zl0RXwMwnqy75SIBVNI8yPvMv/view?usp=sharing) hinges on a theory of premises liability that the plaintiff's team hopes could push the supermarket to make permanent policy changes.

Three lawsuits have been filed over the attack, one of which revolves around 13-year-old Jovanni Sierra Branz, who was stabbed 32 times and died March 13, 2018, at a Palm Beach Gardens sleepover for his birthday.

Two other lawsuits stem from host Dane Bancroft and his mother Elaine Simon, who were severely injured in the attack. They were consolidated for the motion to dismiss.

Corey Johnson, who was 17 at the time, is accused of committing the crime with a six-inch stainless steel utility knife he bought at Publix hours earlier. He's awaiting trial, having pleaded not guilty, though his probable-cause arrest affidavit said he told investigators he had committed the stabbings "because of his Muslim faith."

Palm Beach Public Defender Carey Haughwout is representing Johnson, and did not immediately respond to a request for comment.

'It makes no difference'

Andrew A. Harris, of Harris Appeals in Palm Beach Gardens, is appellate counsel to Sierra Branz's mother, Karen Sierra Velez, now living with "lifelong pain," according to her counsel.

Harris pointed to Florida law, which prohibits the sale of knives to children without a parent or guardian present and defines the knife allegedly used in the attack as a deadly weapon. He argued Publix departed from industry standards by selling it to Johnson without having a system in place to check his age.

"It makes no difference that they [Publix] didn't know that Corey Johnson was going to commit this act, or had no reason to, because they simply should not be selling these weapons to children," Harris said. "There's a reason why the legislature has said that children cannot possess these weapons, and so, by failing to have any steps in place to prevent the sale, Publix's arguments go more to trying to defend their actions from a practical perspective than a legal perspective."

Defense attorney Daniel Gerber of Rumberger Kirk & Caldwell in Orlando said, "Publix will not comment on pending litigation." But in a motion to dismiss (https://drive.google.com/file/d/1LfBOvrmq_6Ns_yuW8k3TI043Mv9o2Zs7/view?usp=sharing), Publix reasoned that it couldn't have known or controlled what Johnson allegedly did with the knife — a weapon it noted he could have easily found elsewhere.

Palm Beach Circuit Judge G. Joseph Curley denied Publix's motion to dismiss (<https://drive.google.com/file/d/1lh2NrrkKLdKqe4imJJZ7CicuOG57500h/view?usp=sharing>) claims for negligence and negligent entrustment. But the judge agreed to dismiss a claim of strict liability, finding private plaintiffs don't have the right to bring a cause of action for violations of criminal Florida Statute 790.17 (http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0790/Sections/0790.17.html), which governs the sale of weapons and firearms.

Harris said his client hopes the litigation will result in Publix implementing a safety-check similar to those it uses for alcohol, cigarettes, certain medications and lottery tickets, so that this will never happen again.

Discovery is yet to confirm whether Publix still has no system in place to prevent the sale of knives to children, but Harris said it appears not thus far.

"This is not a little table knife. This is not a little butter knife. These are weapons and they should not be sold to children," Harris said. "So, our hope in the litigation is that Publix finally implements the simple safety measures that they have for two-dollar lottery tickets."

What's more, many competitor supermarkets do restrict knife sales, according to Harris, who said Johnson actually worked at Winn-Dixie but wouldn't have been able to buy a knife from that store.

Brian LaBovick and Peter Hunt of LaBovick Law Group in Palm Beach Gardens are trial counsel for the plaintiff.

Nelson Baez of Lytal, Reiter, Smith, Ivey & Fronrath in West Palm Beach represent Lucas Bancroft and Elaine Simon, parents of Dane Bancroft. He was pleased with the ruling.

"Florida as a state has determined that minors are not allowed to have weapons without the consent of their parent or guardian," Baez said. "Those laws apply to all retailers and to all citizens, and they apply to Publix. And when weapons are given to individuals who don't have the capacity to use those objects properly, people can get hurt."

Sean Domnick, Gregory Yaffa and Matthew Christ of Domnick, Cunningham & Whalen in Palm Beach Gardens represent Bancroft as the father of another minor at the sleepover, Kyle Bancroft.

Read the ruling:

Filing # 118887764 E-Filed 12/30/2020 01:07:11 PM

**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CIRCUIT CIVIL DIVISION: AA
CASE NO.: 50-2020-CA-001810-XXXX-MB

KAREN SIERRA VELEZ,
Plaintiff/Petitioner

vs.

PUBLIX SUPER MARKET'S INC,
Defendant/Respondent.

_____ /
**ORDER ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

THIS CAUSE came before the Court for hearing on Defendant Publix Super Markets, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") on December 4, 2020. Based upon review of the pleadings and argument of counsel, and the Court being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

This is an action against Publix Super Markets, Inc. ("Publix") asserting claims for Strict Liability (Count I), Negligence (Count II), and Negligent Entrustment (Count III).

More appeals:

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