

Verdict Against Virginia Tech Reversed

The Supreme Court of Virginia has reversed a decision awarding damages to two of the victims of the 2007 shooting at Virginia Tech (VaT). *Commonwealth of Virginia v. Peterson*, 2013 WL 5833262 (Va. Oct. 31, 2013). At approximately 7:30 a.m. on the morning of April 16, 2007, an incident occurred in a dormitory on the VaT campus. When campus police officers arrived, they found two gunshot victims, a male and a female. The Blacksburg Police Department and the Virginia State Police also got involved at a very early time in investigating this incident. The police officers believed that the incident was a domestic, targeted shooting, because there was no sign of forced entry or robbery. The police officers further believed that the shooter had fled the scene and that there was no danger to others.

After learning of the shooting, Charles W. Stegar, VaT President, convened an emergency, 8:30 meeting of the institution's Policy Group. The Policy Group learned from the VaT police that there had been a shooting, leaving one student dead and a second student seriously injured. The Policy Group was also informed that the police were looking for the female student's boyfriend as a "person of interest." The Virginia Governor's office and the University's Board of Visitors were notified and were asked not to make any public statements pending notification of the deceased student's next of kin. At 9:26 a.m. a campus-wide email was sent notifying all students that a shooting had occurred and that the police were investigating and urging all students to be cautious of anything suspicious. At 9:45 a.m. the female student's boyfriend was found and interviewed, and it became readily apparent that he was not the shooter. Also, at 9:45 a.m. the Virginia Tech mass shooting began at Norris Hall. At 9:50 another campus wide email was sent notifying students of the shooting at Norris Hall and directing them to stay inside because "the shooter is loose on campus."

The estates of the two students who were killed in Norris Hall sued the shooter, the Commonwealth of Virginia, and eighteen other individuals, including President Stegar. Following various pretrial motions, the case proceeded to trial against only the Commonwealth. The jury returned a verdict of \$4,000,000 in favor of each of the estates of the deceased students. The trial judge reduced both verdicts to \$100,000 in accordance with the Virginia Tort Claims Act and denied all the Commonwealth's post-trial motions.

The Virginia Supreme Court, on appeal, simply assumed without deciding that there was a "special relationship" between the plaintiffs and the Commonwealth, creating a general duty on the part of the Commonwealth to protect the plaintiffs. The Court then observed:

[T]he question becomes whether, as a matter of law, under the facts and circumstances of this case, the Commonwealth had a duty to warn students about the potential for third party criminal acts. The law [meaning the judge] determines the duty, and the jury, upon the evidence, determines whether the duty has been performed.

Under tort law, the particular duty to protect against the acts of third parties by a warning is predicated on the foreseeability of harm. The Court noted that under Virginia law there are two recognized "levels" of foreseeable harm. The first is harm that is known or reasonably foreseeable. The second involves harm as to which there is a heightened degree of foreseeability. In the latter instance, the defendant knows that criminal assaults against persons are occurring, or are about to occur, based upon "notice of a specific danger just prior to the assault," and there is thus an "imminent probability of harm." The Court then reviewed prior Virginia cases, pointing out how difficult it is for a plaintiff to establish sufficient facts to meet either one of these tests of foreseeability.

The Court noted that the Commonwealth was told by the police that the original shooting appeared to be a domestic matter, that there was a 'person of interest' being sought, and that the perpetrator had fled the scene. Under these facts the Court concluded:

Based on the limited information available to the Commonwealth prior to the shootings in Norris Hall, it cannot be said that it was known or reasonably foreseeable that students in Norris Hall would fall victim to criminal harm. Thus, as a matter of law, the Commonwealth did not have a duty to protect students against third party criminal acts.

The Court reversed the judgment of the trial court and ordered the case to be dismissed.

It should be noted that Virginia law and Alabama law are not the same. Alabama courts are not bound to follow Virginia law.