

OREGON LAW UPDATE

Alcohol and Violence: Is Saying “That’s Just the Alcohol Talking” Enough to Prevail?

case in point...

From the desk of Jeffrey D. Eberhard: In a dram shop claim, the injured plaintiff sues the person or business who served alcohol to the person that harmed the plaintiff. In the following dram shop case, the Oregon Supreme Court answered the following important question: Is it always foreseeable that giving someone alcohol will make that person more violent?

Claims Pointer: The Oregon Supreme Court held that the “common knowledge” that intoxicated people have impaired judgment, is not enough for a bar, restaurant, or individual who served the alcohol to be liable for a violent injury caused by a customer. More specifically, evidence on the type of drinkers that become violent or history of violence at the bar or restaurant is required.

Chapman v. Mayfield, 358 Or 196 (November 13, 2015).

Jason Chapman and Richard Gilbertson (Plaintiffs) sued Carroll Mayfield (Mayfield) and the fraternal Order of the Eagles Gresham Aerie #2151 Gresham Oregon (the Eagles Lodge) after they were shot by Mayfield. On the night of the shooting, Mayfield went with a friend to the Eagles Lodge bar, where he consumed several beers and either a single or double shot of whiskey. Witnesses described Mayfield as “very polite, kind” and a “very nice man,” and also observed that he danced and had a good time at the Eagles Lodge. Unbeknownst to anyone at the Eagles Lodge, Mayfield was carrying a concealed handgun. After leaving the Eagles Lodge, Mayfield walked to another bar down the road, the Gresham Inn, where he was refused service. Mayfield then walked across the street to the Gresham Players Club, pulled his handgun from under his vest and fired multiple erratic shots into the building, striking and injuring Plaintiffs. Mayfield was arrested and a breath test revealed a blood alcohol content (BAC) of between 0.192% and 0.180%.

In their complaint, Plaintiffs alleged that the Eagles Lodge was liable because it negligently served Mayfield and that the Eagles Lodge “had reason to know that Mayfield would become violent, because those who are in the business of serving alcohol know that visibly intoxicated drinkers frequently become violent.” The Eagles Lodge moved for summary judgment, contending that Plaintiffs could offer no evidence that the Eagles Lodge could have foreseen Mayfield’s conduct or

resulting harm.

In response, Plaintiffs submitted deposition testimony of the Gresham Inn bartender that refused Mayfield, who testified that violence occurred once a month in his bar and stated “That’s what alcohol is for... That’s the alcohol talking.” Plaintiffs also submitted a declaration of an alcohol expert who stated that Mayfield’s BAC would have been between 0.200% and 0.250% at the time that he left the Eagles Lodge and opined that Mayfield would have exhibited signs of visible intoxication. The expert also stated that intoxicated persons “frequently become intoxicated” and that the link between alcohol and violence is “well-established in the medical, scientific, and lay literature.” The trial court ruled in favor of defendant, granting the motion for summary judgment and dismissing the Eagles Lodge from the case. Plaintiffs appealed.

A divided Court of Appeals affirmed the trial court’s decision (see our prior update here). The majority (two of the three judges) held that a plaintiff could show foreseeability by either: (1) proving that a bar or bartender’s general observations and experience should have let them know that serving alcohol to a person could result in violence; or (2) by showing that a bar or bartender knew or should have known of the violent propensities of a particular person for alcohol-induced violence. The dissenting judge agreed with the legal analysis but concluded that based on the evidence, especially the deposition of the Gresham Inn bartender that when there is violence, “that’s the alcohol talking,” was enough

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to create a triable issue of fact sufficient to defeat summary judgment.

The Oregon Supreme Court began its review by providing an in-depth review of prior case law regarding negligence, foreseeability of criminal harm, and foreseeability of violent acts of visibly intoxicated persons. The Court first addressed Plaintiffs’ argument that they only had to prove service of alcohol to a visibly intoxicated person to establish foreseeability of violence to third persons. The Court held that proof of service of alcohol alone does not establish foreseeability because someone who serves alcohol to another should not be expected to know that harm to a third person will result, even if the person being served alcohol is visibly intoxicated. The Court explained that the Plaintiffs’ theory would result in overbroad liability for providers of alcohol. For example, under Plaintiffs’ theory, a person hosting a barbecue would be liable for allowing a neighbor to get a beer, leave, and then commit domestic violence—even if the host was unaware of the neighbor’s propensity for violence.

The Court next addressed whether Plaintiffs’ evidence was sufficient to create an issue of fact for a jury (i.e., whether summary judgment was appropriate). The Court observed that Plaintiffs’ argument was that the Eagles Lodge should have known that serving Mayfield alcohol could result in harm to third persons, not that it was actually aware of Mayfield’s propensity for violence. The Court ultimately concluded that Plaintiffs did not describe the type of harm with enough specificity to allow the case to proceed to a jury and that the evidence “described the risk of harm too generally.” The expert and bartender’s statements that intoxicated persons frequently become violent were insufficient because they did not describe a particular harm that could result or the class of person that was at risk from serving alcohol to an intoxicated person. The Court held that a jury could not reasonably infer from the general idea that because some intoxicated people become violent that the Eagles Lodge should have been aware of the risk of violence to Plaintiffs when serving alcohol to Mayfield.

However, the Supreme Court commented that

if the Plaintiffs had described the type of harm with more specificity or provided more specific evidence, its conclusion could have been different. For example, the Court stated that its analysis might have changed if Plaintiffs had provided evidence of “the rate of incidence violence among intoxicated drinkers, the types of drinkers that become violent, or the class of persons at risk from a visibly intoxicated person.”

The Court upheld the trial court’s dismissal of the Eagles Lodge from the case.



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