



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 44 (2005)** – Senator Mandy Dawson
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,402,400 BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL.

FINDINGS OF FACT:

The Shooting

On the morning of Monday, January 27, 1997, Jean Pierre Kamel, a 13-year-old student at Conniston Middle School in West Palm Beach, arrived at school on his bike. At 8:40 a.m., while standing in front of the school on a 9-foot-wide sidewalk, he was shot to death by Tronneal Mangum, a 14-year-old classmate. The 5-foot portion of the sidewalk closest to the school was owned by the school board. The 4-foot portion of the sidewalk closest to the road was owned by the city. The two portions were visibly distinguishable. The two students were near the curb, and thus were on city property at the time of the shooting. School board personnel were near the area in question; however, the School Resource Officer who usually monitored that particular spot had just moved to the center of campus where the majority

of students were at that time. The officer's replacement was walking toward the scene and was approximately 40 feet away when the shots were fired.

Immediately after the shooting, Tronneal ran into the school. He went around bragging about what he had just done. He was arrested inside a classroom shortly thereafter. He was suspended from school for possession of a firearm on campus. He was subsequently tried as an adult and was sentenced to life without parole. Tronneal did not testify at his criminal trial. He has steadfastly refused, and still refuses to disclose where or how he obtained the handgun he used to kill Jean Pierre.

The Shooter

In 1997, Tronneal Mangum was 14 years of age, 6 feet 1 inch tall and weighed 150 pounds. He and Jean Pierre were in a seventh grade math class together. Their math teacher, who had 30 years of teaching experience, described Tronneal as a quiet, polite, yet below average student who did not cause problems in her class. She never saw Tronneal threaten or harm any student and no student had ever complained to her of threats or harassment from Tronneal. She herself never felt threatened by him. Tronneal's discipline record at school for that school year indicated several instances of disruptive behavior, with only one referral, for which he served a detention.

Events Leading Up to the Shooting

Months prior to the shooting, Jean Pierre asked that his seat in math class be moved away from Tronneal because they did not get along. The math teacher did so and afterward noted that Jean Pierre's performance in math class improved.

Jean Pierre and Tronneal had traded various items of personal property with each other; for example, a CD player for a bike. Two weeks before the shooting, Jean Pierre told the School Resource Officer that he had traded an expensive watch to Tronneal for a bike, but now wanted the watch back. The officer suggested that Jean Pierre tell his parents and talk to the school's administrators.

On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg and was written up by a teacher.

The Assistant Principal met with the two students in her office. She noted that Tronneal had one previous detention but decided to use conflict resolution to solve the dispute. She concluded that the two boys were merely horseplaying, and gave Tronneal a detention to be served on Tuesday, January 28. All concerned agreed that Tronneal would bring the watch back to school on Monday and deliver it to one of the school's administrators from whom Jean Pierre would get it. Jean Pierre asked that his father not be notified because he didn't want his father to know that he had traded the watch.

On the Friday before the shooting, Jean Pierre told his math teacher, "Tronneal is after me." Tronneal was absent that day and the math teacher asked Jean Pierre several times if he wanted to talk to an assistant principal. Jean Pierre replied that he didn't. The math teacher did not interpret Jean Pierre's statements as indicating that he felt threatened. He was smiling when he spoke to her. He didn't seem scared or upset. She didn't report the conversation because Jean Pierre told her that the problem had been taken care of.

Jean Pierre's father, Ashraf Kamel, testified at the civil trial that his son had told him about being kicked, but had given a slightly different story about the watch; namely that Tronneal had stolen it. Jean Pierre told his father that he had been to school administration and would have his watch back on Friday. After school on Friday, Jean Pierre told his father that Tronneal was not at school that day and that he would instead get the watch on Monday. Mr. Kamel testified that he believed that the school administrators had handled the issue and thus did not go to the school to see about it.

The Victim

Jean Pierre was born without a tibia in his right leg which was amputated when he was a baby. Despite having a prosthetic leg, Jean Pierre was very athletic, and was named Swimmer of the Year in 1993 by the Boys and Girls Club.

Battle of the Experts

Claimants' expert was of the opinion that the school board employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of

conflict resolution rather than the school's discipline policy for what he described as an assault; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was after him. Claimants' expert also testified that the shooting should have been foreseeable as there had been two previous incidents of gun possession at Conniston Middle School,¹ and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

Respondent's expert was of the opinion that Conniston Middle School was ahead of the security curve with a program that emphasized early intervention, looked for troubled students, and that monitored the campus. Conniston also had an armed, fully trained officer on campus when only 6 percent of schools nationally had a police officer on campus for more than 30 hours a week. He further opined that there were no warning signs that would have been predictive of homicide; that the school could not have deterred the murder; and that having an armed officer at that precise spot at the time of the shooting might have displaced the shooting until later, but would not have prevented it.

LEGAL PROCEEDINGS:

On May 21, 1999, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board.

This case was tried to a jury in the Fifteenth Judicial Circuit between January 30 and February 8, 2002. The jury returned a comparative negligence verdict for a total of \$2,003,000 in damages and found the Palm Beach County School Board 80 percent responsible for the death of Jean Pierre and found Jean Pierre 20 percent responsible for his own death. Tronneal Mangum was not included on the jury verdict form; thus, the jury had no opportunity to apportion any liability to the intentional criminal tortfeasor in accordance with §768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997).

The school board filed Motions for Directed Verdict and/or New Trial which were denied. The school board appealed to the Fourth District Court of Appeal. That court affirmed the case per curiam on February 12, 2003.²

CLAIMANT'S MAIN ARGUMENTS:

- There is a jury verdict that was reduced to Final Judgment in the sum of \$1,602,400, based on a 20 percent comparative negligence offset. The Fourth District Court of Appeal affirmed the judgment. The Final Judgment should be given full effect by the Legislature.
- The school board had a duty to protect its students and this duty was breached when:
 - The math teacher failed to document Jean Pierre's request to have his seat moved and failed to report Jean Pierre's statement that Tronneal was after him.
 - The assistant principal failed to follow school board procedures after the kicking incident.
 - School personnel were not standing at the precise location of the shooting on the day in question.
- Prior gun possession incidents at Conniston made this shooting foreseeable.

RESPONDENT'S MAIN ARGUMENTS:

- The School Board didn't owe a duty to a student who was technically not on school grounds. This shooting took place on adjoining city property, not on school board property.
- The shooting was not foreseeable: there was no notice that Jean Pierre feared Tronneal; Tronneal was not a trouble-maker; there was no red flag in the conflict resolution process; there was no evidence that Tronneal had a gun; and there was no evidence of Tronneal's prior violent acts.
- The two prior reports of gun possession on campus were irrelevant because they did not involve these particular students, nor did they involve shootings; thus, these were not evidence of foreseeability for this shooting.

The source of funds for this claim bill is the general operating budget of the Palm Beach County School District. Payment would negatively impact the school district's ability to fund needed educational programs, particularly given the fact that the monies in the district's contingency fund were expended in order to repair damages from Hurricanes Frances and Jeanne.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber-stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others perceive the Legislature's role to review, reevaluate, and reweigh the total circumstances and the character of the public entity's liability, and to consider the factors that might not have been perceived by or introduced to the jury or court.

At the Special Master's level every claim bill, whether based on a jury verdict or not, is required to be measured anew against the four standard elements of negligence and of course, with or without a Final Judgment, the enactment of a claim bill is generally acknowledged to be completely discretionary with the Legislature.³

Liability

Element 1 -- Duty: Florida law imposes on school officials a duty to supervise students' activities while at school.⁴ This incident occurred during school hours on property that both school officials and students reasonably believed was school property.⁵ Thus, the duty element is satisfied.

Element 2 -- Breach of Duty: I find that the only breach of duty that the jury might have reasonably found concerns the incident where Jean Pierre told his math teacher that Tronneal was after him. The evidence indicates that Tronneal was not in school the day the comment was made, that Jean Pierre did not appear frightened when making the comment, and that the math teacher repeatedly offered Jean Pierre, a normally functioning 13-year-old, an opportunity to see the assistant principal, which he rejected. Given these circumstances, reasonable jurors might have found the math teacher's actions sufficient; however, reasonable jurors also might have found that the teacher should have reported Jean Pierre's comment to the school's administration or have otherwise acted upon it, particularly given that Jean Pierre had told her earlier in the year that he and Tronneal did not get along.

Further, I find that it was not a breach of duty for Assistant Principal Rigola to have employed conflict resolution rather than School Conduct Code procedures for the horseplay and watch incidents. Ms. Rigola investigated, held an informal

hearing on the incident and resolved the immediate problem. Further, she provided for notice to Tronneal's parent(s) because an adult's signature was required in the referral.

Perhaps the procedure could have required parental notification, but Ms. Rigola's failure to have done so cannot constitute negligence because such failure could not have been the proximate cause of Jean Pierre's death. Jean Pierre's father testified at the civil trial that Jean Pierre had told him that Tronneal kicked him; that Tronneal stole his watch; that Tronneal would return the watch to the school's administrators; and that they would return it to Jean Pierre. Consequently, Jean Pierre's father had notice of essentially everything that Ms. Rigola could have told him.

Finally, I find that it was not a breach of duty for the school to not have a security officer or teacher monitoring the precise location of the shooting at the time it occurred. Schools do not have a duty to supervise all movements of pupils at all times.⁶ Schools only have a duty to provide reasonable supervision of students. The evidence demonstrates that the duty was satisfied. The school had a reasonable system of monitoring the campus and the system was fully operational on the morning Jean Pierre was killed.

Element 3 -- Causation: I find the math teacher's failure to have reported or otherwise acted upon Jean Pierre's statement that Tronneal was after him could have reasonably been found by the jury to be one of several proximate causes of Jean Pierre's death.

Further, I find that the evidence of prior gun possessions is not persuasive on the foreseeability issue in this case. Neither of these prior incidents involved Jean Pierre or Tronneal. Neither incident involved discharge of a weapon. Moreover, one of the incidents involved a starter pistol, which could only be lethal in a freak accident. Notably, this shooting occurred before the Columbine shootings, which focused national attention on the possession of guns in schools.

Element 4 – Damages: The jury assessed a total of \$2,003,000 in damages: (1) \$500,000 for Mr. Kamel's past pain and suffering and \$500,000 for his future pain and suffering; (2) \$500,000 for the victims mother's past pain and

suffering and \$500,000 for her future pain and suffering; and (3) \$3,000 for funeral expenses. The school board was tagged for 80 percent. A Final Judgment was entered by the Circuit Court against the school board in the amount of \$1,602,400 on February 22, 2002.

The school board has already paid \$200,000 as follows: (a) \$50,000 for attorney's fees; (b) \$68,341.81 for costs; (c) \$35,829.10 to Mr. Kamel; and (d) \$35,829.09 to Ms. Dimitri, the victim's mother.

LEGISLATIVE HISTORY:

During the 2004 Legislative Session, Senator Dawson filed SB 38. This bill provided for the relief of Jean Pierre's parents, Ashraf Kamel and Marguerite Dimitri. It was referred to the Senate Special Master on Claim Bills, the Senate Education Committee, and the Senate Finance and Taxation Committee. The undersigned Special Master recommended that the bill be amended to direct the school board to compensate Jean Pierre's parents in the total amount of \$400,900, which is 30 percent of the total jury award minus the \$200,000 already paid by the school board to the claimants. The Senate Education Committee passed the bill favorably without amendment. The bill was withdrawn from the Senate Finance and Taxation Committee and placed on the Senate calendar where it died. The bill's companion, HB 1353, was referred to the House of Representatives Claims and Judiciary Committees, but was never considered. No further Special Master hearings have been held in this claim. The parties were provided with the opportunity to supplement the record in this case and the material received was reviewed and considered.

ATTORNEYS FEES:

The claimants' attorneys have provided documentation verifying that attorney fees are capped at 25 percent in accordance with §768.28, F.S.

GENERAL CONCLUSIONS:

As discussed above, I find that a reasonable juror could have determined: that the school board had a duty to Jean Pierre Kamel; that an employee failed to comply with that duty; that such failure was one of several causes of Jean Pierre's death; and that Jean Pierre's parents are entitled to damages as a result of their son's death.

Further, I concur with the jury's assignment of 20 percent comparative liability to Jean Pierre. Evidence demonstrated

that Jean Pierre: (a) told Officer McIsaac that he traded his watch for a bike; (b) told his father that Tronneal stole his watch; and (c) told the assistant principal that he loaned the watch and did not want her to call his father because his father would be angry that he had given the watch away. Thus, it appears that Jean Pierre knowingly failed to notify his father and other school personnel that Tronneal was after him because he did not want to get in trouble over the watch.

Distinguishably, however, I do not find the jury's assignment of 80 percent liability for a \$2,003,000 judgment to the school to be equitable and just. The evidence of school negligence in this case was speculative. The only incident that appears at all susceptible to a negligence finding is Jean Pierre's statement to his math teacher that Tronneal was after him and given the facts surrounding that statement, as discussed above, it is difficult to contemplate what other actions the math teacher should have taken in response to the statement. The jury, however, apparently believed that the teacher should have reported or otherwise reacted to the statement and out of deference to that finding, I recommend upholding the negligence verdict; but, due to the speculative nature of the negligence, I recommend reducing the sizeable assignment of 80 percent liability, i.e., \$1,602,400 (\$2,003,000 multiplied by 80 percent), to the school. The school board's single incident of negligence, only one of several proximate causes of harm to Jean Pierre Kamel does not, in my view, support assessment of 80 percent of the total fault and damages.

In past claim bill cases that, like this case, involved injury caused by an intentional criminal tortfeasor and a Special Master recommendation to reduce the assignment of liability to an unintentional tortfeasor, the Special Master has recommended the symbolic assignment of 50 percent liability to the intentional criminal tortfeasor.⁷ I recommend following this precedent. Unequivocally, the person truly at fault for the tragedy in this case is Tronneal Mangum. The jury, however, never had the opportunity to assign any amount of liability to Tronneal.⁸ As such, I view it as the Legislature's prerogative and obligation to do so and recommend allocation of responsibility (and thus liability) as follows:

Tronneal Mangum	50%
Palm Beach County School Board	30%
Jean Pierre Kamel	20%

RECOMMENDATIONS:

I recommend that Senate Bill 44 be amended: (1) to remove “Whereas” clauses inconsistent with this report’s findings and conclusions; and (2) to direct the school board to compensate Jean Pierre’s parents in the total amount of \$400,900, which is 30 percent of the total jury award minus the \$200,000 already paid by the school board to the claimants.

Accordingly, I recommend that Senate Bill 44 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Kristina White
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
House Claims Committee

¹ During the previous 1995-1996 school year, two gun possession incidents had occurred at Conniston. The first was on February 14, 1996, when Officer Mclsaac took a .22 caliber starter pistol away from a student on campus. The second was on May 22, 1996, when a student told Officer Mclsaac that a part-time student had brought a gun to school. In response, Officer Mclsaac called the West Palm Beach Police Department, and police then went to the student’s home where, after a consensual search of the student’s bedroom, they found a gun. Officer Mclsaac never saw the student bring the gun to school; instead, he only had hearsay evidence that the gun had been on school grounds. A West Palm Beach Police Report indicated that the student was arrested for possession of a gun on school grounds.

² *Palm Beach County School Bd. v. Kamel*, 840 So.2d 253 (Fla. 4th DCA 2003), rehearing denied (Mar 20, 2003).

³ *Fernandes v. Barrs*, 641 So.2d 1371, 1376 (Fla. 1st DCA 1994); *South Broward Topeekegeeyugnee Park District v. Martin*, 564 So.2d 1265, 1267 (Fla. 4th DCA 1990), review denied mem., 576 So.2d 291 (Fla. 1991).

⁴ *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla. 1982).

⁵ *Conniston Middle School personnel routinely patrolled the entirety of the sidewalk beginning at 8:30 a.m. See Broward County School Board v. Ruiz*, 493 So.2d 474 (Fla. 1986) (holding that school’s adoption of a system of supervision and patrols was evidence on the issue of duty to provide supervision at time and place that student was assaulted).

⁶ *Benton v. School Board of Broward County*, 386 So.2d 831 (Fla. 4th DCA 1980).

⁷ See Special Master Final Report for Senate Bill 4 at pp. 12-14, November 25, 1998 (recommending reduction of the amount of liability assigned to the Department of Health and Rehabilitative Services by a jury and recommending the assignment of 50 percent of total liability to the intentional criminal tortfeasors).

⁸ Under Florida law, actions alleging that a property owner's negligence in failing to provide adequate security resulted in an intentional criminal assault by another are governed by joint and several liability, not comparative negligence. §768.81(4)(b), F.S.; *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997). Thus, the jury in this case was not permitted to consider Tronneal Mangum's liability when apportioning damages. The public policy behind this law is to preclude negligent tortfeasors from reducing their liability by shifting it to another tortfeasor whose intentional criminal conduct was a foreseeable result of their negligence. The Legislature, unlike the jury, however, is not prohibited from considering the criminal's liability in a claim bill case because claim bills are purely a matter of legislative grace. As indicated in *Gamble v. Wells*, 450 So.2d 850 (Fla.1984), it is the Legislature's prerogative in a claim bill case to: determine whether to allow compensation; decide the amount of compensation; and determine the conditions to be placed on the appropriation. Accordingly, for the reasons discussed in this report, I recommend that the Legislature exercise its discretion in this case and consider reduction of the amount of school board liability. There is little evidence demonstrating that school personnel could or should have foreseen the criminal danger that Tronneal posed and thus, as a matter of public policy, it appears unjust to impose 80 percent liability for a \$2,003,000 judgment on the school.