IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

WAYNE A. SCHAUB, Plaintiff	:	
v.	:	NO.06-2257
TRAINER'S INN, INC., Defendants	:	

Joshua D. Fulmer, Esquire — Counsel for Wayne A. Schaub
Mark T. Sheridan, Esquire — Counsel for Trainer's Inn, Inc.

Civil Law - Liquor License Liability – Service to a Minor or a Physically Intoxicated Patron – Negligence *Per Se* – Causation (Actual and Proximate Cause) – Effect of Plaintiff's Conviction of a Specific Intent Crime – Damages – No-Felony Conviction Recovery Rule – Collateral Consequences of a Plaintiff's Criminal Conviction

1. A *prima facie* case of negligence requires proof of four elements: (1) a duty or obligation recognized at law; (2) breach of that duty by the defendant; (3) a causal connection between the defendant's breach of that duty and the resulting injury; and (4) actual loss or damage suffered by the claimant.

2. The Liquor Code imposes a duty on a liquor licensee not to sell or furnish any liquor, or malt or brewed beverages, to any minor or to any person who is visibly intoxicated. A breach of this duty constitutes negligence *per se*.

3. Relation-back testimony alone is insufficient to establish a patron's visible intoxication at the time of service. However, when combined with other independent evidence of visible intoxication, evidence of a person's blood alcohol content will support an inference that the person was visibly intoxicated at the time of service.

4. To establish causation, a claimant must show that the defendant's conduct is both the proximate and actual cause of an injury. The test for factual causation is the "but for" test. The test for proximate causation is whether the defendant's conduct was a "substantial factor" in bringing about the claimant's harm.

5. Proximate cause is a question of law. For proximate causation to exist, the risk created by the defendant's conduct must have been a foreseeable cause of the claimant's harm and must be found sufficiently significant for legal responsibility or culpability to attach.

6. A plaintiff's own conduct, for which he has been convicted of a specific intent felony offense and for which he seeks to hold the defendant responsible, serves to break the chain of proximate causation notwithstanding that defendant's conduct may have played a role leading to plaintiff's imprisonment.

7. Under the "no felony conviction recovery rule," as a matter of public policy, a plaintiff who has been convicted of a felony offense is barred from recovering civil damages for the collateral consequences of his criminal conviction, including imprisonment.

8. Civil liability does not exist against a liquor licensee for the criminal or violent acts of its patrons against third parties which occur off premises where the damages sought are claimed by the patron for his conduct which results in the intentional killing of another.

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MEMORANDUM OPINION

Nanovic, P.J. – February 17, 2009

By Order dated February 5, 2009, we granted Defendant's Motion for Summary Judgment. This Opinion explains the basis for that decision.

FACTUAL BACKGROUND

On July 14, 2004, at approximately 11:11 P.M., Henry Kibler, Jr. ("Decedent") was fatally injured when he was struck multiple times with a baseball bat wielded by the Plaintiff, Wayne A. Schaub. According to Schaub, the Decedent was attacking him, acting under the apparent belief that Schaub had done something to harm the Decedent's son. Schaub described his encounter with the Decedent as beginning while he was sitting on the tailgate of a pickup truck parked on the side of an alleyway drinking beer with his friends when the Decedent drove by, stopped, got out, took off his belt, and approached Schaub, swinging his belt above his head, the buckle at the furthest end, and yelling, "You are the punk that did it." Schaub claims that he never met the Decedent before and did not know what he was talking about.

As the Decedent came closer, one of Schaub's friends handed him a baseball bat. The Decedent was undeterred. Instead, he continued to move forward as Schaub stepped back, closing the gap between them, all the time swinging his belt, and then landing a blow to Schaub's forearm. The impact was solid, painful, and tore into Schaub's muscle. At this point,

Schaub struck the Decedent with the bat in the area of his left elbow hoping to get the Decedent to back down. When hit, the Decedent appears to have hesitated and then kept coming; only now Schaub held his ground.

Although Schaub claims not to remember hitting the Decedent any further, it is clear he did so: the autopsy which followed evidenced that Decedent was also struck in the chest and at least once in the head. There is no dispute that the injuries inflicted by Schaub caused the Decedent's death or that the cause of death was blunt force trauma to the head. On May 13, 2005, Schaub pled guilty to voluntary manslaughter[1] and was sentenced to not less than five and a half nor more than eleven years in a state correctional facility.

In these proceedings, Schaub contends that the Defendant, Trainer's Inn, Inc., should be held responsible for his conduct and is civilly liable to him in damages for the

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[1] 18 Pa.C.S.A. § 2503. This section in its entirety reads as follows:

§ 2503. Voluntary manslaughter

(a) General rule.—A person who kills an individual without lawful justification commits voluntary manslaughter if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by:

(1) the individual killed; or

(2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the individual killed.

(b) Unreasonable belief killing justifiable.--A person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 of this title, but his belief is unreasonable.

(c) Grading.--Voluntary manslaughter is a felony of the first degree.

Schaub pled guilty pursuant to Section 2503(a)(1).

effect this incident has had on his life. Schaub was at Trainer's earlier on July 14, 2004, where he drank heavily with a group of friends. Although the exact times are in dispute, when stated in the light most favorable to Schaub, he arrived at Trainer's at approximately 5:30 P.M. and likely left sometime between 7:30 and 8:00 P.M. While at Trainer's, according to Schaub's count, he was served and consumed eleven drinks of Jack Daniels and Coke, five drinks containing Bacardi Rum and at least one drink containing Goldschlager, an alcoholic beverage. Again, according to Schaub, he was served alcoholic beverages even though he was visibly intoxicated and notwithstanding that he was twenty years old, a fact which he asserts was known by the bartender. Between the time Schaub left Trainer's and the time of his clash with the Decedent, roughly three hours, Schaub consumed between five and six beers.[2]

On February 9, 2007, Schaub filed a four-count complaint alleging negligence generally (Count 1), negligence *per se* for being served alcohol while visibly intoxicated and underage (Count 2), negligent supervision by Trainer's of its employees (Count 3), and punitive damages (Count 4). Each count of negligence focuses on the same common factual predicate: that Trainer's and its employees owed a duty not to sell or serve

[2] The Decedent was fifty-five years old at the time of his death. There is no evidence that the Decedent was under the influence of drugs or alcohol when the confrontation with Schaub occurred.

alcoholic beverages to either a minor or a visibly intoxicated person, that this duty was breached since Schaub was both visibly intoxicated and a minor at the time he was served alcohol, and that the damages he sustained were proximately caused by Trainer's conduct.

By Order dated August 28, 2008, this case was set for trial to commence on February 9, 2009, with leave on each party to file a motion for summary judgment on or before November 1, 2008. On November 3, 2008, Trainer's filed a motion for summary judgment asking that judgment be entered in its favor on both Schaub's claims and those raised by the Estate of Henry Kibler, Jr. in a separate action consolidated for purposes of trial with these proceedings. In this motion, Trainer's contends that there is no issue of material fact and that it is entitled to judgment as a matter of law.

DISCUSSION

Schaub claims that Trainer's conduct set in motion an uninterrupted chain of events which culminated in the Decedent's death, that given the extent and conspicuousness of his intoxication he was a clear danger to himself and others, and that the violence he exhibited was a result of his intoxication and his consequent loss of judgment and inhibitions. In response, Trainer's argues that any link between its conduct and the Decedent's death was broken by Schaub's criminal actions and

that, in an offshoot to the issue of proximate cause, the civil law does not permit an award of compensatory damages consequent to a criminal sentence. Distilled to its essence, the question presented is whether Dram Shop liability exists against a liquor licensee for the criminal or violent acts of its patrons against third parties which occur off premises, where the damages sought are those clamed by the patron.

The elements of a cause of action for negligence are well known and not in dispute. A *prima facie* case of negligence requires a plaintiff to prove four elements: (1) a duty or obligation recognized at law; (2) breach of that duty by the defendant; (3) a causal connection between the defendant's breach of that duty and the resulting injury; and (4) actual loss or damage suffered by the complainant. *See* Reilly v. Tiergarten Inc., 633 A.2d 208, 210 (Pa.Super. 1993), *appeal denied*, 649 A.2d 675 (Pa. 1994).

Duty

Preliminarily, we agree with Schaub that sufficient evidence exists to support the first two elements of a *prima facie* cause of action. The Liquor Code imposes a duty on a licensee not to sell or furnish any liquor, or malt or brewed beverages, to any minor or to any person who is visibly intoxicated. 47 P.S. § 4-493(1).[3] There is no dispute that

[3] **Section 4-493 of the Liquor Code makes it unlawful "[f]or any licensee . . .**

Trainer's was licensed to serve alcoholic beverages and that Schaub was a minor within the meaning of the Liquor Code on July 14, 2004.[4] While Trainer's disputes that the evidence supports a finding that Schaub was visibly intoxicated, we disagree.

The proscription of serving a visibly intoxicated person under the Dram Shop Act applies to that point in time at which the person is served alcoholic beverages. "Even if a patron is intoxicated at the time he or she is injured or causes injury to another, the tavern keeper who served the alcoholic beverages to the patron will not be held civilly liable unless the patron was served at a time when he or she was visibly intoxicated." Holpp v. Fez, Inc., 656 A.2d 147, 149 (Pa.Super. 1995). By stressing what can be seen, "[t]he practical effect of the law is to insist that the licensee be governed by appearances, rather than by medical diagnoses." Johnson v. Harris, 615 A.2d 771, 776 (Pa.Super. 1992).

Trainer's is correct that the record does not disclose direct eyewitness testimony of Schaub's visible intoxication at the time he was served alcoholic beverages on its premises. Trainer's is also correct that expert testimony concerning the *probable* blood alcohol content of a patron at the time of

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or any employee, servant or agent of such licensee . . . to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor . . . ." 47 P.S. § 4-493(1).

[4] Under the Liquor Code, a minor is any person less than twenty-one years of age. 1 Pa.C.S. § 1991 (defining "minor").

service together with the expected effect of this alcohol concentration on the *average* person is insufficient by itself to create a genuine issue of fact concerning visible intoxication. *See* id. Nevertheless, when used in conjunction with other independent evidence of visible intoxication, evidence of a person's blood alcohol content will support an inference that the person was visibly intoxicated at the time of service. *See* Hinebaugh v. Pennsylvania Snowseekers Snowmobile Club, 63 Pa.D.& C.4th 140, 148 (Lawrence Co. 2003); Estate of Mickens v. Stevenson, 57 Pa.D.&C.4th 287, 298 (Fayette Co. 2002). Here, in addition to Schaub's proffered expert testimony that his blood alcohol content was .28 percent or greater by the time he left Trainer's and that he would have exhibited obvious signs of visible intoxication while being served alcoholic beverages, the receipt Schaub received from Trainer's, time stamped 7:06 P.M., for the drinks he was billed; the fact that Schaub became boisterous, was disturbing other guests, and failed to quiet down after being told to do so, prompting the bartender to refuse to serve him further because she felt Schaub had had enough and to ask him to leave; and Schaub's own testimony that he was drunk; independently evidence the number and type of drinks consumed by Schaub, the time of his last drink, and visible effects of intoxication which, when combined with the

proffered toxicology testimony, is sufficient to raise an issue of fact for the jury.

Breach

"A violation of the Dram Shop Act is negligence *per se*." Miller v. The Brass Rail Tavern, Inc., 702 A.2d 1072, 1078 (Pa.Super. 1997). The source of liability to a licensee for serving a visibly intoxicated customer, who is himself the injured party seeking recovery, is Section 4-493(1). *See* Hiles v. Brandywine Club, 662 A.2d 16, 19 n.3 (Pa.Super. 1995), *appeal denied*, 675 A.2d 1249 (Pa. 1996); *see also*, Holpp, 656 A.2d at 149; Baker v. Twp. of Mt. Lebanon, 512 A.2d 71, 71-72 (Pa.Cmwlth. 1986); *cf*. Detwiler v. Brumbaugh, 656 A.2d 944, 946 (Pa.Super. 1995) (holding that Section 4-497 of the Liquor Code is a shield which restricts the liability of a licensee to third parties for damages caused off premises by a customer, to those customers who were visibly intoxicated when served alcoholic beverages; this section does not create a cause of action). In the case of a minor who has been served alcohol and is later injured and files suit, liability against the licensee arises under both Section 4-493(1) and the Crimes Code. *See* Matthews v. Konieczny, 527 A.2d 508, 511 (Pa. 1987); Reilly, 633 A.2d at 210.[5]

[5] In Congini v. Portersville Valve Co., 470 A.2d 515, 518 (Pa. 1983), the Pennsylvania Supreme Court held that serving alcohol to a minor to the point of intoxication is negligence *per se*, being a violation of Section 6308 of

Causation

"[T]he breach of a statutory duty does not establish a cause of action in negligence, absent proof of causation and injury." Reilly, 633 A.2d at 210. In the instant case, Schaub must show that the harm he sustained was caused either because Trainer's provided him with alcohol when he was visibly intoxicated or because he was a minor at the time the alcohol was provided. *See* Holpp, 656 A.2d at 149-50. To satisfy this requirement, Schaub "must demonstrate that the breach was both the proximate cause and the actual cause of his injury." Reilly, 633 A.2d at 210. These two aspects of causation are separate and distinct concepts, both of which must be proven for liability to exist.

(1) Factual Cause

Whether a defendant's conduct is the cause in fact or actual cause of a plaintiff's harm is often determined by the "but for" test.[6] This test requires the plaintiff to establish

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the Crimes Code, 18 Pa.C.S.A. § 6308, and that the person furnishing the alcohol can be held liable for injuries proximately resulting from the minor's intoxication. *See also* Matthews v. Konieczny, 527 A.2d 508, 513-14 (Pa. 1987) (holding visible intoxication is not a prerequisite for liability when service is to a minor).

[6] This test, however, is not infallible. In its strictest sense, the "but for" test requires a definitive determination that the defendant's negligence was an absolute prerequisite to what happened. Consequently, "where causation is a significant issue because of the concurrent negligence of more than one actor, the 'but for' test is inaccurate since both actors may be responsible even though the accident would have occurred in the absence of the acts of either one of them." Takach v. B. M. ROOT Co., 420 A.2d 1084, 1087 (Pa.Super. 1980). In contrast, by accepting that the defendant's negligence need only be a significant contributing factor, not always an indispensable one, to the harm which results, the "substantial factor" test

that "but for" the defendant's negligent conduct, he would not have sustained an injury. *See* First v. Zem Zem Temple, 686 A.2d 18, 21 n.2 (Pa.Super. 1996), *appeal denied*, 700 A.2d 441 (Pa. 1997). If this standard is met, then a direct factually-based causal connection exists between the defendant's negligence and the plaintiff's injury. If plaintiff's injury would have occurred notwithstanding defendant's negligent conduct, then defendant cannot be held responsible for the injury. *See* Jeter v. Owens-Corning Fiberglas Corp., 716 A.2d 633, 637 (Pa.Super. 1998).

Under this test, Schaub must establish that an actual causal connection exists between Trainer's act in serving him

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permits a finding of liability under the same circumstances. *See*, *e.g.*, Restatement (Second) of Torts § 432(2); Pa.S.S.J.I. (Civ.) 3.17 (Concurring Causes – Either Alone Sufficient). For purposes of the "substantial factor" test, "a cause can be found to be substantial so long as it is significant or recognizable; it need not be quantified as considerable or large." Jeter v. Owens-Corning Fiberglas Corp., 716 A.2d 633, 636-37 (Pa.Super. 1998) ("In essence, as recognized in the cases, 'substantial' in the 'substantial factor' test means 'significant'.").

The current version of the Pennsylvania Suggested Standard Civil Jury Instructions uses the term "factual cause" in explaining the element of causation to a jury. *See* Pa.S.S.J.I. (Civ.) 3.15 (Factual Cause) and 3.16 (Concurring Causes). This use merges the interplay of "but for" causation with what is a "substantial factor" in bringing about an injury. *See* Subcommittee Note, Pa.S.S.J.I. (Civ.) 3.15 (stating that the terms "factual cause", "substantial factor", and "legal cause" are conceptually interchangeable); *see also* Gorman v. Costello, 929 A.2d 1208, 1212-13 (Pa.Super. 2007) (finding the court's failure to provide a complete definition of factual cause to the jury amounted to a fundamental error requiring a new trial). As perceived by the Pennsylvania Superior Court in Takach, "the 'but for' standard is only one element of the 'substantial factor' standard. First it must be proved that but for the negligence, the harm would not have occurred, and then it must be proved that in addition, the negligence was a substantial factor in bringing about the harm." 420 A.2d at 1087. This latter determination "involves the making of a judgment as to whether the defendant's conduct although a cause in the 'but for' sense is so insignificant that no ordinary mind would think of it as a cause for which a defendant should be held responsible." Ford v. Jeffries, 379 A.2d 111, 114 (Pa. 1977).

alcohol and his injury. As a matter of law, we cannot say that violent behavior is not a foreseeable or predictable consequence of underage drinking, or that Schaub's behavior at the time he injured the Decedent was not caused, at least in part, because of the alcohol he was furnished at Trainer's. Schaub claims he does not have a violent disposition and that his behavior on July 14, 2004, was out of character because of his intoxication. We accept, therefore, for purposes of Trainer's motion, that its conduct was a contributing and factual cause of the harm which Schaub claims.

(2) Proximate Cause

In contrast, legal causation requires an evaluation not only of the foreseeability of consequences but also whether, as a matter of law, legal responsibility should attach to such consequences.[7] Whereas the question of negligence (i.e., duty and breach) centers on whether the defendant's conduct unreasonably risked harm to someone or something, the question of proximate cause centers on whether the harm caused to the specific plaintiff in the case was a foreseeable result of the

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[7] The Restatement (Second) of Torts § 431(a) (1965) defines "Legal Cause" as follows:

> **§ 431. What Constitutes Legal Cause**
> **The actor's negligent conduct is a legal cause of harm to another if**
> **(a) his conduct is a substantial factor in bringing about the harm, and**
> **(b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm.**

risk which makes the defendant's conduct unreasonable. *See* Berry v. The Borough of Sugar Notch, 43 A. 240 (Pa. 1899) (holding that the risk which makes exceeding the speed limit negligent, was not the cause of plaintiff's harm which occurred when a tree fell on a speeding trolley in which plaintiff was the driver, even though the trolley would not have been at that precise point had it not been speeding). "Proximate cause, is a question of law, to be determined by the judge, and it must be established before the question of actual cause may be put to the jury." Reilly, 633 A.2d at 210.[8]

The test for proximate causation is whether the defendant's acts or omissions were a "substantial factor" in bringing about the plaintiff's harm. *See* Brown v. Philadelphia College of Osteopathic Medicine, 760 A.2d 863, 869 (Pa.Super. 2000), *appeal denied*, 781 A.2d 137 (Pa. 2001).

> The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing about harm to another:
>
> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;

[8] **"While actual and proximate causation are 'often hopelessly confused', a finding of proximate cause turns upon: whether the policy of the law will extend the responsibility for the [negligent] conduct to the consequences which have in fact occurred. . . . The term 'proximate cause' is applied by the courts to those more or less undefined considerations which limit liability even where the fact of causation is clearly established." Brown v. Philadelphia College of Osteopathic Medicine, 760 A.2d 863, 868 (Pa.Super. 2000), *appeal denied*, 781 A.2d 137 (Pa. 2001).**

> (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; [and]
>
> (c) lapse of time.

Restatement (Second) of Torts, § 433 (1965); Brown, 760 A.2d at 869.

Whether a factor is a "substantial" factor involves practical consideration of whether the cause is a real cause to which legal responsibility or culpability should be imputed. *See* Restatement (Second) Torts § 431 cmt. a (1965). Reasoning and judgment, in addition to the physical consequences of conduct, play an important part in determining whether any specific act is a substantial factor. Under this test, plaintiff must establish that the nexus between the wrongful acts (or omissions) and the injury sustained is of such a nature that it is socially and economically desirable to hold the wrongdoer liable. "Proximate cause is a term of art denoting the point at which legal responsibility attaches for the harm to another arising out of some act of defendant." Hamil v. Bashline, 392 A.2d 1280, 1284 (Pa. 1978).

"A determination of legal causation, essentially regards whether the negligence, if any, was so remote that as a matter of law, [the actor] cannot be held legally responsible for [the] harm which subsequently, occurred." Reilly, 633 A.2d

at 210 (brackets in original). In other words, "the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of." Id. "[L]iability is contingent upon the probability or foreseeability of the resulting injury, not merely the possibility that it could occur." Id. "Proximate cause will not be found when the causal chain of events resulting in plaintiff's injury is so remote that it seems highly extraordinary that defendant's conduct caused the harm." Miller, 702 A.2d at 1078.

In this case, Schaub argues, in effect, that we should find Trainer's negligent for failing to protect him from the consequences of his own actions. Schaub claims that but for the acts of Trainer's: (1) he would not have killed the Decedent; (2) he would not have been convicted of voluntary homicide; (3) he would not have been incarcerated; and (4) he would not be suffering from the consequences of being in prison. *Paraphrasing* Van Mastrigt v. Delta Tau Delta, 573 A.2d 1128, 1132 (Pa.Super. 1990).

In Van Mastrigt, the plaintiff sought damages for personal injuries resulting from his confinement for the murder of another student, Jeanne Goldberg, claiming that the defendants were responsible for his injuries because of their negligence in serving and/or permitting him to be served alcohol

and drugs as a minor at a fraternity party. In affirming the trial court's dismissal of the plaintiff's complaint, the court stated:

> Even if we were to agree with appellant that the defendants played a role in placing appellant in his current predicament, we would be unable to make the quantum leap necessary for excusing appellant from his own crime. None of the defendants put a knife in appellant's hand. None of the defendants were responsible for the act of killing Jeanne Goldberg. A court determined that appellant alone was responsible for the actual murder of Jeanne Goldberg. It was as a result of this determination that appellant was incarcerated. If this incarceration has resulted in personal injuries, appellant has only to look to himself for the consequences of his senseless action. We find no error in the lower court's determination.

Id. at 1132.

Here, as in Van Mastrigt, Schaub's criminal conduct involved an element of intent[9] and occurred off Trainer's premises several hours after he was served alcoholic beverages by the Defendant. Further distancing the effects of Trainer's conduct is that Schaub continued to consume additional alcohol after leaving Trainer's, contends he was defending himself against a stranger who was attacking him, and wielded a baseball bat which was unexpectedly thrust into his hands. Critical to the decision in Van Mastrigt, was plaintiff's attempt to recover

[9] An essential element of the offense of voluntary manslaughter is the specific intent to kill. *See* Commonwealth v. Rosario-Hernandez, 666 A.2d 292, 298-99 (Pa.Super. 1995).

damages for the consequences of his own criminal and violent behavior, the same as Schaub seeks in these proceedings.

In Van Mastrigt, the court ultimately determined, as we do here, that the plaintiff's own conduct, not that of the defendant, was the proximate cause of his injuries. *See also* Reilly, 633 A.2d at 210 (holding establishment serving liquor to minor breached duty under the Dram Shop Act; however, minor's subsequent assault on his father and police, as well as subsequent wounds suffered from police shots fired, were not natural and probable results of defendant's failure to comply with Act). Under the facts of this case, none of Schaub's injuries are properly attributed to Trainer's conduct. *See, e.g.*, Holt v. Navarro, 932 A.2d 915 (Pa.Super. 2007), *appeal denied*, 951 A.2d 1164 (Pa. 2008), discussed below.

Damages

Schaub's complaint does not specifically identify what personal injuries he sustained for which compensation is sought.[10] Notwithstanding the generality of the injuries claimed, with the possible exception of the injury to his

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[10] In his complaint, Schaub alleges that he suffered and continues to suffer:

(a) severe mental anguish and pain;
(b) loss of his liberty, as a result of the criminal prosecution for his actions on this occasion;
(c) inability to pursue his usual occupation;
(d) loss of earnings and earning capacity;
(e) loss of life expectancy, loss of happiness, and loss of the pleasures of life; and
(f) substantial financial expenses.

Complaint, Paragraph 15.

forearm, all of the injuries Schaub claims to have suffered appear to be related to his conviction and confinement.[11]

In Holt, a mentally unstable patient claimed one of the defendants, an ambulance organization, was negligent and responsible for his reduced earning potential as a result of his convictions for robbery and assault[12], crimes which the plaintiff committed after escaping from defendant's ambulance while being transported between a hospital and psychiatric facility. The Superior Court reversed the entry of a jury verdict in favor of the plaintiff and found that plaintiff's injuries were not proximately caused by defendant's conduct and that to award a convicted felon for his crimes contravened Pennsylvania public policy.

On the issue of proximate cause, the court determined that plaintiff's reduced earning potential due to his convictions was a remote and unforeseeable consequence of defendant's failure to restrain him during transport and was not the "natural and probable" result of defendant's actions or omissions. Id. at 920. Plaintiff's own criminal conduct was held to be the true proximate cause, in effect a superseding

[11] As set forth in the factual background, the injury to Schaub's forearm occurred when he was being attacked by the Decedent and before Schaub struck back in any manner. There is therefore no basis to attribute responsibility for this injury to Trainer's, nor does Schaub argue otherwise.

[12] The Superior Court noted that both these offenses are specific intent crimes. *See* Holt v. Navarro, 932 A.2d 915, 923 n.1 (Pa.Super. 2007), *appeal denied*, 951 A.2d 1164 (Pa. 2008). In Holt, the defendant received a sentence of seven years' probation; he was not imprisoned. *See* id. at 917.

cause, of his reduced earnings. On this point, the Court stated:

> Whereas [plaintiff's] escape from the ambulance truck might have been a natural and foreseeable consequence of [defendant's] failure to restrain [plaintiff] during transport, we cannot agree that [plaintiff's] loss of income due to his criminal behavior following the escape was a natural and probable outcome of [defendant's] breach.

Id. at 924.

On the question of public policy, the court determined that the "no felony conviction recovery rule" prevents convicted felons from recovering damages that would not have occurred but for their criminal conviction. On this issue, the court stated:

> Under the "no felony conviction recovery" rule, the law precludes [plaintiff] from benefiting in a civil suit flowing from his criminal convictions. [Plaintiff's] convictions for robbery, a second degree felony, and simple assault, a second degree misdemeanor, are serious criminal offenses. We hold that, as a matter of law, [defendant] cannot be liable for the collateral consequences of [plaintiff's] criminal convictions. Therefore, the court erred in denying [defendant's] post-trial motion for JNOV.

Id. at 923 (citations omitted).

CONCLUSION

In accordance with the foregoing, we have granted Trainer's Motion for Summary Judgment. Conversely, for reasons which we believe are evident from the discussion above, we have also denied Trainer's Motion for Summary Judgment with respect to the claims of the Estate of Henry Kibler, Jr. against

Trainer's and are directing that case to proceed to trial. *Compare* Nichols v. Dobler, 655 N.W.2d 787, 791 (Mich.App. 2003) (finding it inaccurate to hold, as a matter of law, that the criminal or violent acts of a minor that do not involve a motor vehicle accident are not foreseeable results of the serving of alcohol to the minor, and therefore, cannot serve as a basis for liability to third parties, particularly when the liability of a liquor licensee under the Dram Shop statute is at issue).

BY THE COURT:

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P.J.