SOUTH FLORIDA MALL ATTACKS: CAN THE VICTIMS’ FAMILIES RECOVER FROM THE PROPERTY OWNERS DUE TO INADEQUATE SECURITY MEASURES?

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JENNIFER I. SWIRSKY

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I. INTRODUCTION

On a typical South Florida day, Randi Gorenberg left her home and drove to the Boca Town Center mall for a shopping trip.\(^1\) Security cameras recorded the wife and mother of two leaving the mall at approximately 1:16 p.m.\(^2\) The last image of Randi Gorenberg alive was as she stepped out of the camera’s view into the parking lot to walk to her black Mercedes Sports Utility Vehicle (SUV).\(^3\) Just over thirty minutes later in a nearby city, a witness saw Gorenberg’s lifeless body, mortally wounded by a gunshot to the head, as it was disposed from her own vehicle by an unknown assailant who pushed her out the passenger door.\(^4\) Gorenberg’s vehicle was found within minutes behind a Home Depot.\(^5\) The killer had vanished without a trace.\(^6\)

Fast forward about four and a half months later when a mother and her toddler son exited the same mall and approached their black SUV.\(^7\) After the woman buckled her son in the backseat, she slid into the driver’s seat and noticed a man seated next to her son, holding a gun to the child’s head.\(^8\) The

\(^2\) See also Jerome Burdi, Authorities Are Unsure of Link in Mall Killings–TV Show Host Says Serial Killer at Work, SUN-SENTINEL, Feb. 10, 2008, at 1B. Specifically, the security camera recorded Gorenberg as she exited from the doors situated between Neiman Marcus and Sears. Id.
\(^3\) Skoloff, supra note 1.
\(^4\) Id.
\(^5\) Id. Gorenberg’s purse, cellular phone, and shoes were missing from the scene when her body was found. Id.
\(^6\) Id.
\(^7\) Dennis Murphy, Terror at the Mall, NBC NEWS, June 1, 2008, http://www.msnbc.msn.com/id/24920708/; see also Skoloff, supra note 1 (stating the surviving victim, known as Jane Doe, drove a black Lincoln Navigator and parked her vehicle in the parking garage near Nordstrom).
\(^8\) Id.
man ordered her to drive to an Automated Teller Machine (ATM), then ordered her into the backseat where he bound her hands, feet, and neck and placed goggles with blacked-out lenses over her eyes. He drove her back to the mall, and though he threatened to kill her, he left her physically unscathed. The man then vanished without a trace.

As Christmas drew near, Nancy and Joey Bochicchio drove their black SUV to Boca Town Center Mall. Ten hours later, their slain bodies were found in their vehicle in the mall parking lot. The last image of the Bochicchios, similar to that of Gorenberg, was video footage of the pair as they exited the same doors as Gorenberg to walk to their vehicle in the mall parking lot. Video from a local bank showed their vehicle at a drive-through ATM where Nancy Bochicchio withdrew $500. The victims were fatally wounded by gunshots, clad in goggles identical to the ones described by the surviving victim. Their assailant had vanished without a trace.

All three of these families have sued Town Center mall and the owner of the property, Simon Properties, for negligence. One attorney alleged the mall officials knew criminals were targeting the area, but “turned a blind eye to the ongoing problem.” Other attorneys supported the allegation and stated that police reports proved that crime at the mall was uncharacteristically high prior to these abductions and murders, even though the mall owner contended that security was their main concern.

This article will begin with a discussion of property liability and the rights of victims to be compensated by a business that did not provide adequate security to ensure safety of patrons on the premises. This article will then revisit the victims of Boca Town Center Mall’s kidnappings and murders and discuss the victims’ lawsuits against the mall for security negligence. Section III of this article will discuss security measures that are considered inadequate. This section will continue to explore the security in South Florida malls and the security that was present in Boca Town Center Mall at the time of the specific events in question. Section III will also discuss the security measures of other malls in the United States, as well as current trends and upgrading suggestions. Section IV will discuss the court’s stance on allowing victims of violent crimes to recover from malls and will highlight similar cases and their outcomes. Section V will cover the response of malls in the wake of criminal activity on their premises, specifically what Boca Town Center has done with its security system in the aftermath of these attacks. This article will conclude with the author’s opinion on whether the victims in the Boca Town Center criminal attacks should recover from the mall based on law enforcement’s knowledge of recent criminal activity in the area and security measures in place at the time of each incident.

9. Id.
10. Id.
11. Id. The woman later describes the man as “about 5’11, 180 pounds, wearing sunglasses and a full-brimmed floppy hat, possibly with a ponytail.” See Skoloff, supra note 1.
12. Id. To be specific, Nancy and Joey Bochicchio were parked outside Neiman Marcus and Sears, the same area of the mall parking lot that Randi Gorenberg was parked in on the day she was murdered. See id.; see also Jerome Burdi, et al., Mother, Daughter Slain at Boca Mall—Bodies Found in Their SUV in Parking Lot, SUN-SENTINEL, Dec. 14, 2007, at 8B (providing that Nancy Bochicchio’s vehicle was an SUV).
13. Skoloff, supra note 1; see also Police Turn to Earlier Sketch in Boca Killings, http://www.local10.com/news/14897937/detail.html [hereinafter Police Turn to Earlier Sketch] (describing the vehicle as “a black 2007 Chrysler Aspen”). The bodies of Nancy and Joey Bochicchio were found in their running vehicle, situated “near the south side of the Sears,” around midnight on December 12, 2007. Id.
15. Id.; see also Skoloff, supra note 1. Authorities believe the mother and daughter were robbed of an undisclosed amount of money. Id.
16. E.g., id.
17. See id.
19. Id.
20. Id.; see also Husband of Slain Woman Sues Owner of Boca Town Center, infra note 48.
II. Property Liability

In a Florida case that preceded the attacks at Boca Town Center Mall, a female shopper drove her vehicle into a shopping center parking lot on a weekday morning. The female opened her car door and was attacked by an armed man who then drove her to another location where he sexually assaulted and robbed her. Though the female was released from the unknown attacker’s custody, her vehicle was later recovered with two dead bodies in the trunk. Police records showed that several more armed robberies had occurred on the premises in the previous two years, and security was not within a reasonable standard of care, considering the knowledge of the prior attacks.

Florida has held that a property owner is liable to a victim if the owner does not protect its patrons from reasonably foreseeable dangers. When an owner has knowledge, either actual or constructive, of criminal attacks upon his or her invitees, a duty arises for the owner “to take measures to protect” future invitees. Furthermore, the owner of the property is liable for lack of adequate security on the premises and has the exclusive responsibility to provide security personnel to patrol the area or warn invitees of known criminal attacks on the premises.

A. Negligence by a Business

“The touchstone of a business owner's duty to protect its invitees against negligent injury from third parties is foreseeability.” When an act that causes injury to a patron is performed, there must be prior notice to the owner of an existing dangerous condition so the owner has an opportunity to correct it. In a situation where injury occurred from a criminal act, the owner’s knowledge of past incidents on the premises may be sufficient.

“[T]o bring a common law action for negligence in Florida, the ‘minimal threshold legal requirement for opening the courthouse doors’ is a finding that a defendant's alleged actions created a foreseeable ‘zone of risk’ of harming others.” In Orlando v. FEI Hollywood, Inc., the Fourth District Court of Appeals held that a property owner was liable for failing to protect another from the results of reasonably foreseeable criminal conduct. In Green Companies, a dangerous condition should have been known by the owner. Green Companies, 432 So. 2d at 87. The court found it was a question for the jury whether stricter security should have been enforced at the time the attack occurred. Id.

If there was a response, obviously it wasn’t sufficient enough because we have an [eight][year]old kid who is dead and a mother who is dead. . . . If that incident was made a little bit more public, I believe that not just Nancy and her daughter but the majority of the people during the holiday would have been more aware of their surroundings and been a little more cautious.”

Nancy L. Othon, Town Center Faces Lawsuit, SUN-SENTINEL, Jan. 9, 2008, at 1B.

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<td>21. Federated Dep’t Stores, Inc. v. Doe, 454 So. 2d 10, 11 (Fla. 3d Dist. Ct. App. 1984); see also Green Companies v. Divincenzo, 432 So. 2d 86, 87 (Fla. 3d Dist. Ct. App. 1983) (stating a male was attacked by an unknown assailant at his workplace).</td>
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<td>22. Federated Dep’t Stores, 454 So. 2d at 11.</td>
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<td>23. Id.</td>
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<td>25. Id. at 13; see also Green Companies, 432 So. 2d at 87 (basing its holding on several Florida decisions that held that “one may be liable for failing to protect another from the results of reasonably foreseeable criminal conduct”). In Green Companies, a dangerous condition should have been known by the owner. Green Companies, 432 So. 2d at 87. The court found it was a question for the jury whether stricter security should have been enforced at the time the attack occurred. Id.</td>
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<td>26. Id. at 88. The facts of this case show that the owner foresaw the harm, attempted to protect invitees from the harm, and then abandoned the heightened measures, despite the harm remaining; see Dale M. King, Lawsuit by Murder Victim’s Sister Cites ‘Negligence’, BOCA RATON NEWS, Jan. 15, 2008, at 1. The Boca Town Center Mall was on actual and constructive notice that problems occurred at the mall, so the owner had a duty to exercise reasonable care to protect his or her patrons from foreseeable criminal conduct. Id. In order to uphold this duty, the owner should have instituted long-lasting safety policies and procedures. Id. The attorney for Boca Raton victim’s, Nancy Bochicchio, sister stated:</td>
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<td>29. Id. at 169.</td>
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<td>30. Id.</td>
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<td>32. 898 So. 2d 167.</td>
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Court of Appeal found that the defendant did not foresee actions that would create such a zone of risk.\(^\text{33}\) A zone of risk is created when a risk is conceivable, in which case the owner owes a duty to protect patrons from the dangerous condition.\(^\text{34}\) A dangerous condition can be indicated if there is a likelihood that a third person could interfere with the safety of patrons or security on the premises is inadequate.\(^\text{35}\)

In *Wal-Mart Stores, Inc. v. Caruso*,\(^\text{36}\) the owner was not found negligent due to surveillance because he or she did not owe a duty to protect patrons from unforeseeable harm.\(^\text{37}\) In *Wal-Mart Stores*, a security guard left the surveillance screen unattended momentarily and, by chance, missed an employee who placed rat poison in the drink of his employer.\(^\text{38}\) The Fourth District Court of Appeal found the security guard was not negligent because there was no duty for the store to protect the victim from harm that could not be foreseen.\(^\text{39}\) The court further stated that an owner of a premise is “required to protect against criminal acts by third parties if the act is reasonably anticipated and the owner had actual or constructive knowledge of the specific danger.”\(^\text{40}\)

B. **Compensation by a Business**

A Florida court proposed the questions:

Do the allegations of the complaint at hand bring this case within the applicable legal principles so as to permit recovery? To put it another way, have sufficient facts been alleged to meet the test of foreseeability which would impose a duty upon the [business] to furnish protection to . . . decedent?\(^\text{41}\)

In *Drake v. Sun Bank and Trust Co. of St. Petersburg*,\(^\text{42}\) there were no allegations of previous, similar attacks that would place the business on notice.\(^\text{43}\) Without such requisite notice, the business had no duty to protect the decedent, and therefore, the appellant was unable to recover.\(^\text{44}\) However, the rule of law implies that, with notice, the business would have a duty to protect its patrons, and failure to offer such protection would result in recovery to those harmed.\(^\text{45}\)

\(^{33}\) *Id.* at 169. In *Orlando*, a patron at a gym turned around to see if another patron would drop weights on the former’s feet and hurt his back when he turned to look. *Id.* at 168. The court determined that the gym could not foresee the individual’s isolated behavior to take action to protect the injured party. *Id.* at 169; e.g., see also King, *supra* note 26. *Orlando*’s facts are distinguished from Boca Town Center Mall where the owner knew of recent violent activity on the premises, specifically a woman and her son who were kidnapped, bound, and robbed at gunpoint in their vehicle on August 7, 2008. *Id.*; see also *Dateline NBC* (NBC television broadcast, June 1, 2008). The interview with surviving victim, Jane Doe, disclosed that Jane attempted to tell police officers about her ordeal, but the officers were hesitant to believe her. *See id.* About three months later, Jane Doe received a call from officers wanting to speak about her experience because they believed it could be related to a previous attack that began at the same mall. *Id.* It was not until then that a description was given to the police department and a sketch of Jane Doe’s attacker was drawn. *Id.* When Nancy Bochicchio and her daughter, Joey, arrived at the same mall in December of 2007, it was probable they were unaware of the two attacks that occurred on the premises that would become linked to their eventual deaths. *Id.*

\(^{34}\) *See Hall v. Billy Jack’s, Inc.*, 458 So. 2d 760, 761 (Fla. 1984).

\(^{35}\) *Id.* at 762.

\(^{36}\) 884 So. 2d 102 (Fla. 4th Dist. Ct. App. 2004).

\(^{37}\) *Id.* at 105.

In order to impose a duty upon a landowner to protect an invitee from criminal acts of a third person a plaintiff, invitee, must allege and prove that the landowner had actual or constructive knowledge of prior, similar criminal acts committed upon invitees. The landowner is not bound to anticipate criminal activities of third persons . . . .


\(^{38}\) *Wal-Mart Stores*, 884 So. 2d at 104.

\(^{39}\) *Id.* at 105.

\(^{40}\) *Id.*

\(^{41}\) *Drake v. Sun Bank and Trust Co. of St. Petersburg*, 377 So. 2d 1013, 1015 (Fla. 2d Dist. Ct. App. 1979).

\(^{42}\) *Id.* at 1013.

\(^{43}\) *Id.*

\(^{44}\) *See id.* at 1016.

\(^{45}\) *See id.* at 1015.
Moreover, Florida law allows a deceased victim’s family to bring a lawsuit for wrongful death.\textsuperscript{46} The law in Florida further provides that victims’ families can be compensated by the person that would have been liable for damages if death had not occurred, even if the death was caused by a felony.\textsuperscript{47}

1. Lawsuits of Boca Victims

To recover from the criminal attacks, all victims from the Boca Town Center Mall—the survivors of the deceased victims and the victim who survived a kidnapping and robbery—filed lawsuit against the owner of the mall, Simon Properties.\textsuperscript{48}

Police records obtained by the Gorenberg attorney show that “[fifteen] robberies, including four armed robberies and eight strong-arm robberies” occurred in just the two years prior to Randi Gorenberg’s murder.\textsuperscript{49} The victim’s family alleged the mall lacked security and people were not aware of previous crimes, possibly because the owner remained silent on the issue.\textsuperscript{50} The lawsuit filed by the woman who was kidnapped from the Boca Town Center Mall claimed the mall “failed to provide adequate security, including surveillance cameras in the parking lot.”\textsuperscript{51} The woman also claimed “Town Center Officials knew of security problems before her attack.”\textsuperscript{52} According to the lawsuit filed by Nancy Bochicchio’s sister, the mall was placed on notice about security issues, but did not take measures to protect patrons.\textsuperscript{53} The attorney for Bochicchio’s sister stated “[o]ne of the main purposes for the lawsuit is to ensure that property owners who invite people onto their premises protect those patrons.”\textsuperscript{54} The attorney further stated in a televised interview that the “lawsuit alleges negligence, security, and wrongful death against the mall because of the two prior incidences . . . .”\textsuperscript{55} The lawsuit for the deaths of the Bochicchios does not allocate an amount sought by the family members.\textsuperscript{56} However, in December of 2008, one year after the slayings of the Bochicchios, their lawsuit was expanded to include several other corporations that “were ‘put on notice’ about security issues at the mall but failed to take measures to protect its patrons.”\textsuperscript{57} The attorney for the case stated “‘[w]hen all is said and done, the mall and property

\begin{itemize}
  \item \textsuperscript{46} FLA. STAT. § 768.19 (2007). When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.
  \item \textsuperscript{47} Id.
  \item \textsuperscript{49} Id.; see also Adam Frankel, P.A., Florida Armed Robbery Lawyer, http://www.bocaratoncriminaldefenseattorney.com/topics/robbery.html (last visited Aug. 2, 2008) (defining strong-arm robbery as “a term used to describe a situation where the offender used any degree of force to complete the act . . . [and] is technically a term used to describe the crime of ‘robbery by sudden snatching’”).
  \item \textsuperscript{50} Husbant of Slain Woman, supra note 48.
  \item \textsuperscript{53} Othón, supra note 26. Specifically: The lawsuit contends that both Boca Raton police and mall patrons put Simon officials on notice about ‘certain serious security problems,’ yet mall officials acted with reckless disregard for patrons’ safety by failing to take security measures. Simon also should have anticipated that violent crimes could occur on the property but did not provide adequate security personnel according to the complaint.
  \item \textsuperscript{54} Id.
  \item \textsuperscript{56} Id.
  \item \textsuperscript{57} Jerome Burdi, Attorney Amends Wrongful Death Lawsuit Against Town Center Mall, SUN-SENTINEL, Dec. 12, 2008, at 18A.
\end{itemize}
owners have a responsibility and accountability to the community and to the people that patronize their business."\(^{58}\)

**III. ADEQUACY OF SECURITY**

“Shopping malls . . . have an obligation to maintain reasonably secure premises.”\(^{59}\) The security a mall should provide is not simply the employment of patrolling guards, but rather, a combination of strategies should be invoked to ensure the utmost protection of the patrons.\(^{60}\) “Such tactics may involve the application of adequate lighting, access management plans, police patrols and the use of closed-circuit television.”\(^{61}\) The security a mall needs should be on a mall-by-mall basis and what is adequate for one mall might not be adequate for another.\(^{62}\) However, in assessing the future needs of a particular mall, the history of criminal activity should be considered.\(^{63}\)

A Florida court that tried a case about criminal attacks at a hotel found that:

> [T]he degree of care that [a landowner] must exercise will vary in relation to the attendant circumstances, relevant factors in deciding whether [a business] has exercised ordinary care in providing adequate security are: industry standards, the community's crime rate, the extent of assaultive or criminal activity in the area or in similar business enterprises, the presence of suspicious persons, and the peculiar security problems posed by the . . . design.\(^{64}\)

In *Orlando Executive Park, Inc. v. P.D.R.*\(^{65}\), the Fifth District Court of Appeal found that whether security is adequate and whether absence of security could lead to criminal acts are questions for the jury.\(^{66}\)

Particularly in view of the evidence concerning the past record, and therefore the future foreseeability of violent crime at its premises, a jury could properly find that a discharge of the [landowner's] duty to keep the common areas reasonably safe required that a guard or other security measures be provided . . . in order to prevent . . . a tragic incident . . . .\(^{67}\)

In *Hendry v. Zelaya*,\(^{68}\) the Third District Court of Appeal found for the injured party because there was evidence that inadequate security resulted in injury to the patron of the establishment.\(^{69}\) In *Hendry*, while the business was more crowded than usual because of a holiday weekend, it was found a “larger than usual police presence was required, as well as additional in-house security personnel.”\(^{70}\) The business, however, was not prepared for the crowd and had less than the minimum number of officers needed for a safe premise.\(^{71}\)

The Florida standard, as mentioned above, is for business owners to provide adequate security, measured by the degree of care to be exercised based on factors, which include criminal activity in the area.\(^{72}\) In Boca Raton, Florida, a woman had already been abducted, robbed, and murdered, all of

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58. Id.
60. Id.
61. Id.
62. See id.
63. Id.
65. Id. at 442.
66. See id. at 446.
67. Id.
68. 841 So. 2d 572 (Fla. 3d Dist. Ct. App. 2003).
69. Id. at 574.
70. Id.
71. Id.
72. *Orlando Executive Park*, 402 So. 2d at 447.
which began at the Boca Town Center Mall. At the time of this criminal attack, mall owners had not yet placed cameras in the parking lot. Therefore, no explanation exists for what happened before Randi Gorenberg’s lifeless body was reported tumbling from a black Mercedes SUV thirty-nine minutes after she walked to her vehicle at Boca Town Center Mall.

Considering this event, one of criminal activity in the area, heightened security measures were needed to reach the reasonable degree of care required by Florida law. Yet, on August 7, 2007, another woman suffered through an event police can only assume resembles what Gorenberg experienced because no security existed to offer explanations to Gorenberg’s disappearance. When the second victim was released, she reported her kidnapping immediately to authorities, but the news report referred to this victim’s story as an alleged abduction, and the story never ran in local newspapers to warn others that a criminal attack possibly occurred.

With two reports of “assaultive or criminal activity” in the area in the time period of three and a half months, business owners should have questioned the adequacy of their security measures.

A. Mall Security in South Florida

“Almost once a week, a shopper finds herself face-to-face with a bad guy at a South Florida mall. And in nearly one of four cases, he’s got a gun.” A study showed that mall security is generally concentrated inside the mall, yet the most dangerous places at malls are parking lots and garages.

1. Cameras on Property

Investigations discovered that surveillance cameras are typically broken, do not exist, or capture images that cannot be used. While a video camera is one of the best tools security can rely on to solve the common question of “who-done-it,” that video camera must be functional to achieve those results.

The Sun-Sentinel researched this controversial topic and found that eighty-three percent of the most violent crimes at South Florida malls are either on video that is too poor in quality to be rendered helpful or simply not on video at all. Moreover, “[m]ost malls do not have security cameras monitoring their parking areas.” And while malls might have security cameras placed strategically throughout premises, the question still remains if there is someone on duty to watch the monitors connected to those

73. Skoloff, supra note 1. Randi Gorenberg, the first victim to be kidnapped, taken off mall property in her own vehicle by an unknown assailant, and murdered, was attacked on March 23, 2007 in the middle of the day. Id. According to this article, the killer was seen by no one. Id. Gorenberg’s body was pushed out of her vehicle into the road through the passenger side door, yet the person who witnessed this occurrence was unable to see the man behind the wheel of the black Mercedes SUV. Id.; see also Murphy, supra note 7 (stating Gorenberg walked towards her vehicle, but once she reached the parking lot there are no answers to what happened because mall owners had not placed security cameras there).

74. Id.

75. Id.

76. See Orlando Executive Park, 402 So. 2d at 447.

77. See Skoloff, supra note 1.

78. Murphy, supra note 7.

79. Marc Freeman & Luis F. Perez & Rachael Joyner, Community Stunned: Police Come Under Fire, SUN-SENTINEL, Dec. 15, 2007, at 1A. The article specifically states a one-paragraph news release was issued advising that “detectives were investigating an ‘alleged armed robbery that was reported to have occurred’ at the mall.” Id.

80. Orlando Executive Park, 402 So. 2d at 447.

81. Id.

82. Brian Haas et al., Danger at the Mall - Targets: Women are Victims Most Often–When: Most Crimes Happen During the Day–Where: Parking Areas are the Most Dangerous, SUN-SENTINEL, May 18, 2008, at 1A.

83. Id.

84. Id.

85. Id.

86. Id.

87. Haas et al., supra note 82, at 1A.
As a result of crimes in South Florida that either occurred at the malls or began at the malls, the malls and their security companies were sued by the victims.\textsuperscript{89} Simon Property Group, owner of Boca Town Center Mall and approximately 240 properties total,\textsuperscript{90} ignored the request of a former security director when she requested “more security to combat ongoing crime.”\textsuperscript{91} Perhaps malls are giving patrons a false sense of security by creating the appearance of a safe environment, rather than providing actual safety.\textsuperscript{92}

2. Security Guards on Property

“Some of the security measures that help to deter violent crime include: adequate lighting, proper landscape maintenance, monitored video surveillance, dummy video cameras and properly trained and positioned security guards.”\textsuperscript{93}

Security guards who are hired to work in places, like malls, are not police officers.\textsuperscript{94} Instead, they are merely trained to observe their surroundings and report criminal or violent activity to police officers, while their main focus is to completely avoid dangerous situations for both themselves and shoppers.\textsuperscript{95} The security guards that malls employ do not carry weapons, cannot chase suspects, and typically act as “customer service, giving directions, giving escorts and just being there.”\textsuperscript{96} And while most crimes occur outside the mall in parking lots or garages,\textsuperscript{97} a mall security employee stated that his particular mall only places six of their twenty guards in those areas.\textsuperscript{98}

Most South Florida malls obtain security guards by contracting with outside companies specifically aimed at protecting shopping areas.\textsuperscript{99} Simon Properties has contracts with three different security companies in South Florida, and each of the Simon Properties mall managers frequently meet with police in order to increase their measures to provide safety to their patrons.\textsuperscript{100}

“The law has always permitted a person to hire an employee or an independent contractor to perform a non-delegable duty owed by that person to third parties.”\textsuperscript{101} In \textit{United States Security Services Corp. v. Ramada Inn, Inc.}, a patron of the business, or a business invitee, was attacked by a third party.\textsuperscript{102} The business of which he was an invitee contracted an independent company to provide security
for its guests. The court in *United States Security Services Corp.* found that the business had a non-delegable duty to the patron to provide a reasonably safe premise and, thus, the business was vicariously liable for any negligence by the contracted company’s security efforts. While the court ruled that the business is vicariously liable, it further held that the business and the contracted company are jointly and severally liable and judgment must be entered against both parties—the vicariously liable party and the negligent party.

a. **Boca Security Measures**

The lawsuit filed by “Jane Doe,” the surviving victim of the Boca Town Center Mall kidnappings, cites the Defendant as Simon Properties and alleges Simon was negligent in failing “to retain, consult, and hire competent employees, agents, and/or security personnel.” The complaint further alleged that Simon “was negligent in its duty to maintain, operate, control, and/or provide adequate security for the [Boca Town Center Mall] and breached its duty of care to the Plaintiff . . . as a known and foreseeable occupant of the premises.”

To provide security, five cameras were installed at the perimeter of the mall parking lot in 2006. This initial surveillance system only placed cameras at “the primary access points into the mall.” At the January 7, 2008 Workshop Meeting of the City Council of the City of Boca Raton, City Manager, Leif Ahnell, explained that the mall took action, prior to the murders, by providing security guards to patrol the area. He further stated that in 2004, the mall became a beat to which approximately seventeen police officers were assigned. He also said that “there is an overlapping of zone coverage with unmarked police cars, tactical units, and special operations patrolling the area.”

**B. Mall Security in the United States**

“Malls across the nation have heeded calls to boost security by hiring more guards and installing surveillance cameras . . . .” This increase in security is due to several shootings that have occurred throughout the United States in shopping centers and malls. Security officials are concerned since the September 11, 2001 attacks “that malls could become ‘soft targets’ for terrorists: [P]laces where large groups congregate and that are difficult to secure.”

The United States security officials’ fear became a reality when a teenager in Omaha entered a mall, armed with an assault rifle, and killed eight people, wounded three others, and then shot himself. Similarly to the Boca Town Center murders and several other instances previously mentioned, the Omaha
attack was not an isolated incident, unique to a location typically intended for shopping. Instead, the gunman’s brutality:

[W]as the latest in a series of incidents to suggest that glittering indoor shopping emporiums, attractive because of their climate, order and parking, also can be particularly vulnerable to attacks. With its open spaces, its crowds, its accessibility, a mall can be a predator’s dream.

However, the Federal Bureau of Investigators Director reiterated that events such as these shootings are very rare and trying to prevent incidents of this type would be difficult. Even shoppers have expressed their lack of concern and belief that attacks of this nature are random and not something to be feared.

1. Security Trends

“[T]he mall is a place where you can make an impression, and where you can find multiple victims.” It is particularly common for a large number of shoppers to congregate at malls during the holidays, which is why security is characteristically increased at those times.

However, research showed that most of the security guards that are added to the malls to ensure the safety of patrons are not armed, and therefore, are not prepared for situations such as the mass tragedies that have occurred in malls in the United States. In fact, it is estimated that “only about [five] percent of mall security officers are armed” and they mostly serve to profile possible criminals and deter the acts from coming into fruition. Moreover, the turnover rate of security personnel is one hundred percent in some malls each year, and such a high turnover rate defeats the purpose of training programs. The lack of trained professionals in the roles of security guards is also prevalent in the area of emergency-preparedness. Without a constant staff of guards, coordination between the mall security and other safety professionals is difficult to achieve. Furthermore, reports show that few malls have attempted to rehearse emergency plans with law enforcement agencies, and “none of the malls visited by researchers conducted joint exercises with police or other first responders.”

2. Security Suggestions

Malls have hired more security guards and installed surveillance cameras, but these measures of security have not limited access to the establishments. It has been suggested that the United States follow the methods of other countries, like Israel, and consider metal detectors and car searches to prevent criminal attacks. It is identified by security professionals that these measures are not perceived well in

118. See Keen, supra note 114.
119. Id.
120. Id.
121. Id.
122. Id.
123. Keen, supra note 114. The corporate owner of Westroads Mall in Chicago stated that patrol increased during the holidays. Id.
124. Id.
125. Massacre, infra note 133.
126. Keen, supra note 114.
127. Id.
128. Id.
129. Id.
130. Id.
131. Keen, supra note 114. Conversely, security analysts have said that malls and other places where notable mass incidents have occurred, such as schools and college campuses, still remain safe, and invoking Israeli-like methods to promote safety could cause malls to become less successful. Id. Metal detectors and car searches would likely deter people from shopping at the malls, while a mall’s main focus is ideally to lure customers into the building. Id.
the United States, but with the recent criminal activity throughout the country, it might be an inevitable means to an end.\footnote{A spokesperson for the International Council of Shopping Centers stated that most Americans shop near their homes and the malls are a part of their community and part of their daily life.\footnote{The mall is a place that people have frequented for years and the sudden requirement of searches upon entering the premises could potentially shock the conscience of the shoppers.}}

In the wake of tragedy, some customers and employees of the malls want to know what mall security is doing to heighten the methods of protection.\footnote{Other customers, conversely, do not believe that advancements in security will make a difference when a criminal has a goal in his or her sights.} If a crime is deterred from taking place in the mall because of stricter security, it does not mean crime will also be deterred in the parking lot.\footnote{It is believed that people get anxious in response to a mass casualty incident and the anxiety fades with time, unless there is another occurrence.} A Los Angeles psychologist stated it is freedom people seek, and as long as there is simply an illusion of safety, Americans will be content.\footnote{IV. \textsc{Mall Owner’s Liability}}

The illusion of safety, however, is not enough to protect mall owners and managers from financial damages and legal fees when human lives are lost on their property.\footnote{While there is no bright line ruling about whether mall owners and managers should be held liable for random violence on their properties, the issue is not moot and is still being deliberated.} In a case from Kansas, a brain damaged victim of a mall shooting sued the mall’s manager and the security provider.\footnote{The lawsuit alleged that the mall should have increased security measures in response to past incidents at the mall, and it further alleged that no guards were assigned to the outside of the mall when the shooting occurred.} The jury ruled that the security guard’s arrival on scene had not deterred the shooting, therefore, the mall was not liable.\footnote{The victim of a New York mall shooting filed a negligence suit against the owner of the property, claiming there was not enough adequate security when the gunman entered the mall. The gunman walked around the property for an hour before he began shooting, and “witnesses at the shopping center said they observed the shooter assembling the assault rifle at his vehicle and purchasing ammunition from the adjoining Wal-Mart.” This case is still in litigation at the Supreme Court of the State of New York.}

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132. See id.
134. Id.
135. Id.
136. See id.
137. See id.
138. Id.
139. \textit{Massacre, supra} note 133.
140. Id.
141. Id.
142. Id.
143. Id.
144. \textit{Massacre, supra} note 134.
145. Bodamer, \textit{Talking Points: A Shooting in Omaha Shines a Light on the Importance of Coordination and Communication}, \textsc{Retail Traffic}, Jan. 1, 2008, at 22. This article specifically discusses security measures and whether they need to be reevaluated in the wake of disasters, such as the Omaha, Nebraska shooting where eight people were killed and five others wounded before the gunman killed himself. \textit{Id.} As it stands, mall security and individual store security interact minimally, with the occasional conversation over a designated channel on their radios. \textit{Id.} at 24. Security guards are said to be mall “ambassadors” whose primary purpose is to create a feeling of safety and control. \textit{Id.} at 25. Any measures taken beyond the appearance of a safe environment could be construed by shoppers as “a security state,” which are measures malls are not willing to take. \textit{Id.}
146. \textit{Id.}
The New York case is one of first impression for the state, but the well-settled rule of law is that “New York landowners owe people on their property a duty of reasonable care under the circumstances to maintain their property in a safe condition.” The main issue is whether the property owner could reasonably suspect that a breach of security was likely with respect to past similar incidents at the same mall.

Mall security is said to begin with the shoppers and their behavior. Security continues with those hired to perform the duty of maintaining safe premises. To determine the extent of security needed, personnel must conduct an assessment, including an examination of the history of criminal activity. The mall may be liable if there is a history of crime at the mall, creating reasonable anticipation that future criminal acts could occur. A high crime area or crimes in the area that encompass the mall is not enough for the mall to be liable for a criminal attack on the property.

You must also show that the mall owner failed to exercise reasonable care in protecting you. For example, the owner may be liable if [t]he security guards at the mall were negligent, [t]here were not enough security guards at the mall, or [t]he lighting was inadequate in the parking lot.

V. RESPONSE IN THE AFTERMATH

Imagine security cameras covering every inch outside of Town Center at Boca Raton. Shoppers are coming and going at each entrance. All parking areas and public spaces could be recorded and stored. In the wake of mall security finding the bodies of a mother and daughter shot and robbed in a mall parking lot, that security scenario has gained momentum and could already be on the way to becoming a reality.

As of February of 2008, Simon Properties insisted they would be adding more cameras to Boca Town Center mall, bringing the number of cameras on their property to over 1000. Prior to that announcement, yet immediately following an interview by Town Center’s surviving victim, Boca Raton police installed four additional surveillance cameras in the parking lot of the mall that “enable Boca Raton police officers to track and record suspicious people and activity from the police substation.” These images from the cameras can be observed by officers in their patrol vehicles.

Boca Raton’s Town Center has added additional security since the murders including: [A] Boca Raton police sub station, added security cameras, strong retailers and an employee safety program,
moved the valet parking areas farther away so there are more spaces for customers. In addition, all mall locations will have the sketch of the murder suspect at every entrance.\textsuperscript{160}

The mall planned to take further security steps in the aftermath of the abductions and murders by moving valet parking to the outsides of the parking lot to free more spaces near mall entrances.\textsuperscript{161} Town Center also sought to transport employees from their parking spots to the mall entrances by shuttle, as well as create valet programs for parents with children.\textsuperscript{162} Off-duty Boca Raton police officers have been employed to patrol the mall, and security guards have been hired to patrol the mall twenty-four hours a day.\textsuperscript{163} The mall also began a safety awareness program that bears similarities to a neighborhood watch program.\textsuperscript{164} Surveys are being conducted with shoppers and security escorts and a parking lot shuttle are made available to anyone who requested it.\textsuperscript{165}

Mall and city officials further “announced a partnership with the crime prevention council to form the [T]ask [F]orce.”\textsuperscript{166} This force will consist of twelve members who were due to meet to discuss methods for people to protect themselves around the city of Boca Raton.\textsuperscript{167} The Task Force is responsible for searching for a suspect as part of their daily routine.\textsuperscript{168} The group meets once a week and has followed up on approximately 900 of the 1000 tips that have come in to their departments.\textsuperscript{169} The Task Force advised that they will continue to put out the sketch of the suspect and will continue to use local and national resources to capture the man responsible for these crimes.\textsuperscript{170}

Just prior to national coverage on America’s Most Wanted of the incidents at Boca Town Center Mall, mall officials put up a new sketch of the suspect throughout the mall, as well as posters at other South Florida Simon malls.\textsuperscript{171} The Vice President of Operations for Simon Property Group explained the company had the potential to expose the sketch to 300,000 people per day which could aid in the capture of the suspect.\textsuperscript{172}

Still, even with the mall’s efforts to increase security, shoppers are not feeling the sense of safety and security believed to drive Americans to a sense of contentment.\textsuperscript{173} “Boca residents continue to look over their shoulders. Despite stepped-up security at Town Center Mall, a [sixty-ish] shopper, says she only goes, ‘[W]ith my husband, not by myself. I’m scared.’”\textsuperscript{174} However, a spokesperson for the mall maintains that Boca Town Center “continues to be one of the safest malls in South Florida.”\textsuperscript{175}

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\item Nicol Jenkins, \textit{Coral Springs Police Chief Requests Added Local Mall Security After Boca Mall Murders}, \textit{The Our Town News}, Feb. 28, 2008. Chief Foster of the Coral Springs Police Department stated he had employed one officer to Coral Square Mall every day at the department’s expense. \textit{Id.} He further stated that he met with the mall to voice his concerns with their security measures and was promised that Simon Properties would increase their security during the holidays, but that promise was unfulfilled. \textit{Id.}
\item Cahn, supra note 109, at 3B.
\item Id.
\item Luis F. Perez & Leon Fooksman, \textit{Owners of Mall Criticized Again--Town Center Officials Say They’ve Adopted Safety Measures}, \textit{Sun-Sentinel}, Feb. 12, 2008, at 1B.
\item Id. This article states that while advancements, such as moving valet parking and free use of valet parking for parents shopping with their children, have been positively viewed by patrons, council members posed the question why the mall restricted the new security measures from the hours from nine o’clock in the morning to five o’clock in the afternoon on weekdays. \textit{Id.}
\item Id.
\item Id.
\item Perez, supra note 163, at 1B.
\item Id.
\item Id.
\item Id.
\item Jerome Burdi, \textit{Mall to Post Fliers of Boca Killings}, \textit{Sun-Sentinel}, Feb. 17, 2008, at 7B.
\item Id.
\item Massacre, supra note 133.
\item Jill Smolowe, et al., \textit{Is a Serial Killer Stalking this Mall?}, \textit{People}, June 23, 2008, at 119–20. The posters placed around the malls by the property owner offer a $350,000 reward for information leading to the apprehension of the suspect or suspects. \textit{Id.} at 120.
\item Id.
In June 2008, to further promote that Boca Raton is a safety-conscious town, city leaders advanced another step and announced a plan for a city-wide video surveillance system.\textsuperscript{176} “The system would link current traffic cameras, public building cameras and possibly those on private property . . . .”\textsuperscript{177} With this system in place, police will be able to gather real-time information and better evidence.\textsuperscript{178} While this system could aid in solving crimes sooner, the public has mixed emotions about it.\textsuperscript{179} It is a matter of safety versus privacy and law enforcement officials intend to employ means in areas where there is a “legitimate law enforcement need.”\textsuperscript{180} The city-wide surveillance system was reviewed by the city commission in September of 2008.\textsuperscript{181}

At the end of 2008, Boca Raton’s Town Center officials unveiled a new surveillance system and a police substation, both of which were developed to increase safety at the mall.\textsuperscript{182} Though the officials adamantly stated that the advancements were completely unrelated to the recent high-profile cases, it is believed the additions to security could aid in the prevention of like events occurring in the future.\textsuperscript{183} The updated equipment includes a new camera system that allows security guards to zoom in to get clear images of license plates or faces of people on the property.\textsuperscript{184} While the technological attempts by Boca Raton’s officials were criticized as “‘standard in the mall playbook’ when mall crimes come under media scrutiny,” it was stated that they had the right idea with the police substation because keeping sworn officers on patrol on the premises would make the necessary difference if they are used correctly.\textsuperscript{185}

Similar to Boca Raton’s increase of cameras on their premises to protect patrons in shopping areas, adjacent Broward County has explored the same security measure.\textsuperscript{186} After the death of a Broward Sheriff, the County Commissioner proposed an ordinance that would require around the clock video surveillance at retail businesses.\textsuperscript{187} The Commissioner advised that the proposal was encouraged by the death of the Broward officer, as well as the December murders of the Bochicchios at Boca Town Center.\textsuperscript{188}

Unfortunately, all of these plans came too late because when Randi Gorenberg left the mall in March of 2007, there was no camera situated in the parking lot to help her family understand what led to their loved one’s death.\textsuperscript{189} When a mother and her two-year-old son were attacked in the parking garage of Nordstrom at Boca Town Center Mall, then abducted and robbed, lack of evidence left the mother doubted by local police when she recounted her ordeal.\textsuperscript{190} When Nancy and Joey Bochicchio entered the mall, they were captured by a surveillance camera, and when the pair left the mall, they were also captured by cameras.\textsuperscript{191} The next image of the two was not in the mall parking lot, but as their vehicle drove through a nearby ATM.\textsuperscript{192} There are no definitive answers regarding what happened to the mother

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  \item \textsuperscript{177} Id.
  \item \textsuperscript{178} Id.
  \item \textsuperscript{179} Id.
  \item \textsuperscript{180} Id.
  \item \textsuperscript{181} Boca Raton Proposes City-Wide Surveillance, supra note 176.
  \item \textsuperscript{182} Brian Haas, Boca Police, Mall Show Off Beefed-Up Security, SUN-SENTINEL, Oct. 3, 2008, at 1B.
  \item \textsuperscript{183} See id.
  \item \textsuperscript{184} Id.
  \item \textsuperscript{185} Id. A Los Angeles security analyst advised that it is important to maintain the substation’s presence on the property, staffed by sworn police officers, because a camera system is not an adequate substitution “for a good security force.” Id.
  \item \textsuperscript{186} Broward to Consider Camera Ordinance, SOUTH FLORIDA BUSINESS JOURNAL, June 27, 2008, http://www.bizjournals.com/southflorida/stories/2008/06/23/daily52.html.
  \item \textsuperscript{187} Id.
  \item \textsuperscript{188} Id.
  \item \textsuperscript{189} See Murphy, supra note 7.
  \item \textsuperscript{190} Id. at 2.
  \item \textsuperscript{192} Id.
\end{itemize}
and daughter, except their bodies, bound and shot to death, were found that night, in their vehicle, back in the mall parking lot. The same parking lot that merely had five cameras placed at its perimeter until these tragedies forced the mall in Boca Raton to take further action regarding security measures.

VI. CONCLUSION

In an upper-scale community like Boca Raton, Florida, it is hard to imagine a constant fear while walking through a parking lot. Stereotypically, it is the high-crime, lower income areas that cause a chill to radiate down a person’s spine as he or she exits the safe confines of a vehicle and proceeds through a parking lot. Conversely, stereotypes are just a conception, often times a misconception, and the daunting truth is that crime is an unwelcome inhabitant of every community. And in the face of the unthinkable becoming a reality, knee-jerk reactions ensue. The question remains, where are the proactive measures that could have prevented the most unlikely outcome? Additionally, when those measures cease to exist and something occurs that results in loss of life, both to the deceased and those who will continue to be victimized by the event for the rest of their lives, where is the accountability for not providing the safe haven believed to exist?

When any patron walks through the parking lot of a shopping mall and sees security vehicles slowly cruising, anxiety lifts. When any shopper enters the doors to a mall and notices surveillance cameras posted above, he or she thinks someone is watching. The problem lies when those security guards driving the vehicles are so few that various areas of the parking lot remain unguarded. The problem rests when those cameras are either not functional or the monitors they are connected to go unmonitored. In the cases of Randi Gorenberg, “Jane Doe”, and Nancy and Joey Bochicchio, somebody was not where they could have or should have been. Had enough security guards been employed on the days of their abductions, one might have witnessed a suspicious male lingering in the parking lot. One might have seen a male sneakily slip into the backseat of a vehicle. One might have even witnessed a struggle between a victim and the suspect. If cameras were placed in the parking lots of Town Center, one might have captured activity that led to the apprehension of a killer before he struck again. Why did it take the murder of a mother, the abduction of a mother and son, and the double homicide of a mother and daughter to initiate an action plan to provide safety to patrons at this mall?

Florida law holds that a property owner is liable to a victim if the owner does not protect its patrons from reasonably foreseeable dangers. When an owner has knowledge, either actual or constructive, of criminal attacks upon his or her invitees, a duty arises for the owner to take measures to protect future invitees. In two of these cases, criminal attacks had already occurred, beginning on mall property. Randi Gorenberg’s horrific death set the stage for Boca Town Center Mall and Simon Properties to react and employ harsher security measures to protect their patrons. Yet, on December 13, 2008, the only cameras to capture the Bochicchios were the same cameras to capture Randi Gorenberg. There were cameras at the entrance between Neiman Marcus and Sears that showed all three victims entering and exiting, but when all three stepped out of the view of the lens, they disappeared until their lifeless bodies were discovered. Proof of a lack of security in the Boca Town Center Mall parking lot is additionally exemplified in news stories stating it took approximately eight hours for the bodies of the Bochicchios to be found by a security guard as their unnoticed vehicle sat idling in the parking lot of the mall.

Furthermore, the owner of the property is liable for lack of adequate security on the premises and has the exclusive responsibility to provide security personnel to patrol the area or warn invitees of known

193. Id.
194. See Cahn, supra note 109, at 3B. This article advises that the new surveillance at Boca Town Center Mall was announced the day after the surviving victim of the abductions at the mall was interviewed and stated she filed a lawsuit in Broward County Circuit Court against the mall owner. Id. The article states Town Center had more than 900 cameras throughout the mall—on the perimeter and at the entrances and parking garages—and would have more than 1000 once their enhancements were completed. Id. Simon Properties’ spokesman said the mall planned to add the extra cameras in 2006, before any of the murders, and now with additional funding granted, more parking lot cameras will be purchased. Id.
criminal attacks on the premises. Rather, time was taken to interview and administer a polygraph test to “Jane Doe”, and in the meantime, her abduction was unannounced by mall officials and Boca Raton police until they recognized a possible link to other events in the area. Mall officials breached their duty to warn invitees of known criminal attacks on the premises by not alerting the public of even a “possible” attack.

The breach of duty by Boca Town Center Mall and the property owner, Simon Properties, resulted in the deaths of Randi Gorenberg, Nancy Bochicchio, and Joey Bochicchio. The breach of duty also caused a woman to live in constant fear for her safety and her son’s safety. The breach of duty caused children to be left without parents, parents to be left without children, husbands to be left without wives, and questions to be left without answers. It is evident that the mall and the owner of the mall were negligent in providing security to their patrons, as well as providing warnings to their invitees of prior criminal attacks.

Florida law allows deceased victim’s family to bring a lawsuit for wrongful death caused by the negligence of others. The law in Florida also grants victims’ families the right to be compensated by the person that would have been liable for damages if death had not occurred, even if the death was caused by a felony. In the abduction case, the mall and its owner should be liable for damages caused to “Jane Doe” for lax security and negligence on the part of the mall to provide adequate safety precautions in the aftermath of an already publicized murder. In the murder cases, the mall and its owner should be liable to the families of the victims for damages, even though the death was caused by a felony, because had the victims survived—as “Jane Doe” did—the mall and its owner would have been liable to the survivors for inadequate security.

While no amount of money can replace the void the families of the deceased now have in their lives, and no dollar amount can be placed on the once felt sense of security “Jane Doe” had prior to this ordeal, these victims all deserve to be compensated in their lawsuits. Money will not cure the pain everyone involved has suffered, but perhaps the pay out will force accountability upon Boca Town Center Mall and Simon Properties, and encourage them to continue to intervene before terror strikes again at this mall.