

NY Court: Shooting Victim May Sue Gun Maker

Carolyn Thompson, Associated Press

BUFFALO, N.Y. (AP) — A former high school athlete who was shot in 2003 may sue the companies that made and distributed the handgun used in the crime under an appellate court ruling that gun control advocates say will keep irresponsible gun makers and sellers from taking advantage of a federal law shielding them from lawsuits.

The ruling by the Appellate Division of the state Supreme Court reversed a lower court's 2011 dismissal of victim Daniel Williams' complaint, which accused Ohio gun maker Hi-Point and distributor MKS Supply Inc. of Ohio of intentionally supplying handguns to irresponsible dealers because they profited from sales to the criminal gun market.

The appellate panel said the Buffalo man's lawsuit should have been allowed to move forward because Williams' claims fall within exceptions contained in the Protection of Lawful Commerce in Arms Act, a 2005 federal law shielding gun makers from lawsuits over criminal use of their products.

It is the first case in which a court has held that a gun manufacturer may be held liable under the PLCAA, according to the Washington-based Brady Campaign to Prevent Gun Violence, which brought the appeal.

"If a gun company knows or has reason to know that a dealer or distributor that is selling the guns is doing so irresponsibly and in some cases, illegally, they need to do something about it," Brady Center attorney Jonathan Lowy said Monday. "They can't just continue to blindly supply them, knowing they're going to be arming criminals and just pocket the money and look the other way."

Williams was 16 when he was shot by a gang member in a case of mistaken identity as he played basketball outside his home. The bullet to his stomach ended his hopes of a Division I college basketball career.

Attorneys for Williams argued the gun had ended up on the streets of Buffalo and in the hands of convicted shooter Cornell Caldwell through gun trafficker James Bostic, who'd bought some 200 guns from a federal licensed firearms dealer in Ohio by using a straw purchaser who would sign the paperwork.

Williams' attorneys claimed the Ohio dealer, Charles Brown, knew or should have known that Bostic was buying the handguns to resell on the streets because he paid cash, chose Hi-Point 9 mm guns favored by criminals and bought them in bulk. Hi-Point and MKS should have known that Brown, who has since become president of MKS, was distributing the guns they supplied to him to criminals, Williams said.

Hi-Point attorney Scott Allan disagreed with the appellate court ruling, issued

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Friday, saying Supreme Court Justice Frederick Marshall had gotten it right last year when he dismissed the suit under the PLCAA. The law was intended to allow for dismissal of such cases early on, he said.

The case now moves to the discovery phase, where witnesses are interviewed.

"We're confident that discovery will show that there were not violations of any statute by (Hi-Point) in its sale of the pistol to MKS," Allan said. He said Hi-Point, whose corporate name is Beemiller Inc., has and will continue to sell handguns only to federal licensees and that MKS is a licensed whole distributor.

Attorneys for MKS and Brown did not immediately return calls for comment Monday.

Lowy, the Brady Center attorney, predicted that the decision would impact cases in trial courts and appellate courts around the country.

"Cases like this send a powerful message to those bad apples in the gun industry who want to profit from the criminal gun trade thinking that they're above the law and they'll never have to pay the cost when innocent people are shot," he said. "And cases like this send a message that even if you don't care about the human consequences, if you care about your bottom line you should act responsibly."

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