
**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION**

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE
2014 MAY 13 A 10:06

**JIMMIE AND MARVA BRADFORD
As next of kin to TAYLOR BRADFORD,**

Claimants,

v.

**Claims Commission No. T20090360
Regular Docket**

STATE OF TENNESSEE,

Defendant

OPINION

I. Introduction

This case involves the tragic events of September 30, 2007, surrounding the vicious murder of Taylor Bradford, then a transfer student and football player at the University of Memphis, hereinafter referred to as U of M. The attack was carried out by four men, three of whom were not students at U of M; all four are currently in the custody of the Tennessee Department of Correction for first degree murder.

Taylor Bradford's parents, Jimmie and Marva Bradford, initiated this case against the State of Tennessee alleging acts of negligence by U of M for failing to adequately provide for Taylor's safety which resulted in his death.

The pertinent facts surrounding the fatal shooting of Taylor Bradford and the alleged actions or omissions of U of M in providing for the safety of Taylor are set forth in greater detail hereinafter.

II. Issues Presented

The issues presented in this case are as follows: 1) whether the death of Taylor Bradford was foreseeable; 2) whether any act or acts of U of M, whether by omission or commission, were a cause in fact and legal cause of the fatal shooting of Taylor Bradford by four third party criminals who targeted Mr. Bradford specifically for a robbery and, if so, 3) the amount of the damages suffered as a result of the death of Taylor Bradford and, finally, 4) whether those damages, if any, should be reduced under the doctrine of comparative fault.

As has been said on so very many occasions, the jurisdiction of this Commission has been limited by the Legislature to those categories of cases set forth in **Tenn. Code Ann. § 9-8-307(a)(1)**. The Claimants ground their cause of action on **Tenn. Code Ann. § 9-8-307(a)(1)(C)**.

III. FACT TESTIMONY

Taylor Bradford's mother, Marva Taylor Bradford, testified first on behalf of Claimants. Mrs. Bradford, who received her undergraduate degree from Fisk University and a master's degree from the University of Michigan, is the manager of the Office of Financial Management for the Tennessee Department of General Services. (Tr., Vol. 1, p. 20, line 17- p. 21, line 2)

Mrs. Bradford testified that Taylor was an outgoing and talkative child who never met a stranger. (Tr., Vol. 1, p. 21, line 19- p. 22, line 24) She stated that, except for sinus problems, he was very healthy as a child. (Tr., Vol. 1, p. 23, lines 16-24)

Taylor Bradford was always very active in sports (Tr., Vol. 1, p. 24, line 5) In fact, while he was a student at Antioch High School, he played football, basketball and participated in track. (Tr., Vol. 1, p. 25, lines 5-7) In addition, he took honors classes and was chosen for the All-State chorus. (Tr., Vol. 1, p. 26, lines 3-8) Taylor also was active in choir and youth group at the AME church, and worked in their summer enrichment program. (Tr., Vol. 1, p. 27, lines 15-20) Taylor Bradford received an honors diploma from his high school in 2004. (Tr., Vol. 1, p. 28, lines 18-19) He also was a Hume Award finalist because of his involvement in athletics.

Mrs. Bradford testified that Taylor "was always, for lack of a better term, an entrepreneur." (Tr., Vol. 1, p. 32, lines 15-16) Mrs. Bradford said one summer Taylor made over eight hundred dollars (\$800) mowing their neighbors' yards. (Tr., Vol. 1, p. 33, lines 1-3) Mrs. Bradford noted that he was active in Inroads, which introduces high school students to the world of business. (Tr., Vol. 1, p. 33, lines 19-22) As part of that program, Taylor worked at the book division of Lightning Source, an Ingram Industry subsidiary. (Tr., Vol. 1, p. 33, line 24-p. 34, line 1) Bradford further testified that Taylor worked at Kentucky Fried Chicken, Bill Hurd Chevrolet and American Tuxedo. (Tr., Vol. 1, p. 33, lines 11-18)

Mrs. Bradford testified that Taylor filed income tax returns on the wages he made. (Tr., Vol. 1, p. 35, line 6) Mrs. Bradford testified that Taylor earned two thousand five hundred forty-eight dollars (\$2,548) in 2002, (Tr., Vol. 1, p. 39, lines 22-24) four thousand two hundred seventy-nine dollars (\$4,279) in 2003, (Tr., Vol. 1, p. 40, lines 22-23) and six thousand four hundred seventy five dollars (\$6,475) in 2004. (Tr., Vol. 1, p. 41, lines 22-23)

Mrs. Bradford testified that Taylor Bradford enrolled as a freshman at Samford University in Birmingham in the summer of 2004 and played on the football team. He received recognition from the Ohio Valley Conference for his academic achievement. (Tr., Vol. 1, p. 42, lines 6-18)

Mrs. Bradford testified that Taylor decided to transfer to U of M during his sophomore year at Samford. He had a spot on U of M's football team. (Tr., Vol. 1, p. 45, line 16- p. 46, line 3) Taylor arranged to take some courses at Nashville Tech so he "would still be on target to graduate in 2008." (Tr., Vol. 1, p. 47, lines 15-18) Mrs. Bradford explained that Taylor had several friends attending U of M, including some on the football team. (Tr., Vol. 1, p. 48, lines 12-15) When asked whether he liked U of M, Mrs. Bradford said Taylor was "excited to be there." (Tr., Vol. 1, p. 48, line 21) She also noted that his grades remained good at U of M; he was "still making As and Bs." (Tr., Vol. 1, p.51, line 12)

In addition to being on the football team, Taylor was pledging Kappa Alpha Psi, the same fraternity his Dad belongs to. (Tr., Vol. 1, p. 49, lines 1-18) Mrs. Bradford explained that fraternities play an especially important role for minority students. (Tr., Vol. 1, p. 49, lines 23-24)

Mrs. Bradford testified that she and Taylor especially liked to attend movies together. She recalled when they went to the midnight show of King Kong and fell asleep on each other's shoulders. (Tr., p. 52, lines 21- p. 53, line 9) They also frequently had DVD nights at home with Taylor and his friends. (Tr., Vol. 1, p. 53, lines 20-21)

Mrs. Bradford then testified about the events of September 30, 2007. She said she and her husband found out about the shooting on Sunday night when their younger son, Vincent, called. (Tr., Vol. 1, p. 56, lines 9-24) Sometime thereafter either the vice president of the university or the chaplain also called "to confirm that Taylor was in the hospital, he had been shot." (Tr., Vol. 1, p. 57, line 24- p. 58, line 1) Then other people, other parents, and even co-workers began calling because they heard Taylor had been shot. (Tr., Vol. 1, p. 58, lines 3-18) Eventually three of Taylor's close friends called and said they were headed to Memphis. (Tr., Vol. 1, p. 58, lines 19-22) Mrs. Bradford further testified that Mr. Bradford's sister also called to tell them she was coming to their home to ride to Memphis with them.

Mrs. Bradford testified that when they finally reached the Regional Medical Center in Memphis, there were 20 or 30 students standing in front of the hospital. (Tr., Vol. 1, p. 61, lines 9-12) She and Mr. Bradford were taken into a waiting room area where they were met by a university vice president, the chaplain and some of Taylor's friends. (Tr., Vol. 1, p. 61, line 22- p. 62, line 8) The treating physician then came in and told them "that Taylor was gone, that they had worked on him but he was gone." (Tr., Vol. 1, p. 62, lines 12-14)

Mrs. Bradford testified that after they were told that Taylor had died, they left the hospital and went back to the U of M campus. (Tr., Vol. 1, p. 63, line 12) The next day they stayed to make funeral arrangements for the funeral home to come get Taylor's body. (Tr., Vol. 1, p. 66, lines 2-4) They also picked up Taylor's things from his dorm and got family members to drive to Frankfort, Kentucky to pick up their son, Vincent. (Tr., Vol. 1, p. 66, line 7- p. 67, line 1)

The Friday night following Taylor's murder the Bradfords had a wake at the church, followed by a funeral on Saturday. The church where the funeral was held could hold eight hundred (800) people, but it was overflowing. (Tr., Vol. 1, p.68, line 4- p.69, line 24) Mrs. Bradford testified that the cost of Taylor's funeral came to thirteen thousand four hundred eighty-six dollars and thirty-two cents (\$13,486.32). (Tr., Vol.1, p.72, lines 2-3; Tr. Ex. 2) They paid the Hills of Calvary an additional one thousand six hundred fifty dollars (\$1,650) to purchase the lot and grave marker and to open and close Taylor's grave. (Tr., Vol. 1, p. 72, line 10- p. 73, line 21; Tr. Ex. 3) They also paid Reminisce Multimedia Productions to put together a slide show of pictures of Taylor for the funeral service. The cost came to one hundred nine dollars and twenty-five cents (\$109.25). (Tr., Vol. 1, p. 76, line 5- p. 77, line 2; Tr. Ex. 4)

They also received a bill for services at the Regional Medical Center in the amount of twenty-one thousand seven hundred eight dollars and twenty-five cents (\$21,708.25). (Tr. Ex. 5)

When asked when she learned what had actually happened to Taylor, Mrs. Bradford said she believed Chief Godwin told her Taylor "had been shot on campus because someone was trying to rob him." (Tr., Vol. 1, p.79, lines 11-12) Mrs. Bradford said she and her husband attended every single one of the criminal proceedings against the people who killed their son. (Tr., Vol. 1, p.81, lines 13-17)

Mrs. Bradford testified that she went back to work the week following Taylor's death. (Tr., Vol. 1, p.82, lines 6-8) But eventually she told her boss she thought she needed to take some time off. She was approved for family medical leave. (Tr., Vol.1,

p. 83, lines 9-17) She also testified that her family physician referred her for therapy with Dr. Rosemary Jeffries. (Tr., Vol. 1, p.84, lines 2-4)

Mrs. Bradford testified about how much she misses her son. "There is not a day goes by that I don't think about Taylor." (Tr., Vol. 1, p., 85, lines 14-15) When asked what she missed most she said, "The hugs and the smiles and just being able to talk to him and touch him." (Tr., Vol. 1, p. 91, lines 3-4)

When asked how Taylor's death affected her marriage, Mrs. Bradford testified that her husband "kind of withdrew into himself. I could tell. He still does it now." (Tr., Vol. 1, p. 86, lines 23-34) She said both her husband and her son, Vincent, continue to miss Taylor terribly. (Tr., Vol. 1, p. 87, lines 4-5) Mrs. Bradford concluded, "I think marriage and family, those are synonymous to me. That's one of the links in our family that has been removed." (Tr., Vol. 1, p. 88, line 23- p. 89, line 1)

When asked why she felt the U of M was responsible for Taylor's death, Mrs. Bradford said, "I feel they did not create a safe environment for my child if someone could bring a gun on campus and actually shoot him." (Tr., Vol. 1, p. 89, lines 20-22)

Taylor Bradford's father, Jimmie Bradford, also testified in this cause. Jimmie Bradford finished his bachelor's degree at Tennessee State University on a football scholarship, then got a master's degree as well. (Tr., Vol. 2, p. 40, line 24- p. 41, line 7) He worked for more than thirty years in the Metropolitan Nashville Public School System and retired as a principal. (Tr., Vol. 2, p. 41, lines 7-17)

Jimmie Bradford described his son as smart, mischievous (Tr., Vol. 2, p. 42, line 24- p. 43, line 1) and "full of life." (Tr., Vol. 2, p. 42, line 22)

Jimmie Bradford said the night Taylor was shot a family friend named Jamar called and told them. Then their son Vincent called, hysterical. (Tr., Vol. 2, p. 53, lines 3-6) Then the chaplain called and said Taylor had been shot and was in the emergency room. (Tr., Vol. 2, p. 53, lines 6-8) Jimmie Bradford said the chaplain called back twenty minutes later and reported that Taylor had passed away. (Tr., Vol. 2, p. 53, lines 12-14) He said Marva became hysterical and just said, “not my baby, not my baby, not Taylor.” (Tr., Vol. 2, p. 53, lines 16-17)

Jimmie Bradford said he then called his older children from his first marriage and told them to go and get Vincent. (Tr., Vol. 2, p. 53, lines 19-20) He also called his other sister and asked her to contact someone at the funeral home. (Tr., Vol. 2, p. 53, lines 22-24)

Jimmie Bradford said while they were in Memphis, he walked down to the tree where Taylor crashed and found that “students had started putting everything on that tree.” (Tr., Vol. 2, p. 59, lines 5-6) Jimmie Bradford talked about how difficult it was seeing and talking to the U of M football players while they were in Memphis. (Tr., Vol. 2, p. 60, lines 4- 16)

When asked how Taylor’s death affected his life, Jimmie Bradford stated:

You know, after my son was killed, my bubble was bursted.
I didn’t go back to work. I stayed home for about a month.
And I went back too soon, because I wasn’t Mr. Bradford.
I was not Mr. Bradford. (Tr., Vol. 2, p. 56, lines 2-6)

Jimmie Bradford said he went to his family doctor for help and was referred to a psychologist, Dr. Rosemary Jeffries, who he saw once a week at first, then every other week, then once a month . . . (Tr., Vol. 2, p. 56, line 22- p. 57, line 20) Jimmie Bradford

testified he went to Dr. Jeffries for therapy for “[a]t least four years.” (Tr., Vol. 2, p. 58, line 1)

Jimmie Bradford’s family doctor also prescribed medicine he could take “when I would feel myself coming to the edge.” (Tr., Vol. 2, p. 62, lines 22-23) When asked what he meant by “coming to the edge,” Jimmy Bradford replied: “Just—I don’t know—just why go on. I miss Taylor.” (Tr., Vol. 2, p. 63, lines 4-5)

Jimmie Bradford stated that although he went back to work for a short time, he ended up retiring after Taylor died. (Tr., Vol. 2, p. 60, lines 21-24) His retirement was in part to give him time to attend the criminal proceedings in Memphis and to help Vincent deal with Taylor’s death. He said Vincent decided he didn’t want to play football anymore and that Vincent came back to Nashville to finish college. (Tr., Vol. 2, p. 61, lines 2-17)

Jimmie Bradford testified that he thinks about his son all the time. When he is working out, he says his son’s name on the last two reps. (Tr., Vol. 2, p. 63, lines 13-14) And Bradford said that he also wears “something of his every day.” (Tr., Vol. 2, p. 64, line 9) He also has kept some of Taylor’s U of M football workout clothes with his number 110 on it. (Tr., Vol. 2, p. 64, lines 10-11)

When asked why he was suing U of M, Jimmie Bradford described security issues he saw on campus. He said he and Marva had to wait for 25 minutes for security personnel to come to Taylor’s dorm so they could retrieve his stuff. (Tr., Vol. 2, p. 65, lines 14-16) Jimmie Bradford noted, “A guy rides up on a bicycle and tells me it’s just the two of us patrolling on bikes and I had to come all the way from across town. So, you know, that kind of security is a problem.” (Tr., Vol. 2, p. 65, lines 17-20) Jimmie

Bradford said when they were on campus related to the trial, all they had to say was “I am Taylor Bradford’s dad” and the person in the booth would let us in. He acknowledged he didn’t have a hang tag with which to get in. (Tr., Vol. 2, p. 66, lines 6-13)

Jimmie Bradford also testified that Taylor Bradford had filed a campus grievance with U of M security against one of the defendants, Mr. Devin Jefferson, before the shooting. (Tr., Vol. 2, p. 66, lines 17-19)

Jimmie Bradford testified that it was his understanding that the offenders were waiting for his son just outside Carpenter Complex “right behind the rec center, laundromat.” (Tr., Vol. 2, p. 70, lines 15-16)

When asked on cross-examination whether he had training in security or policing, Jimmie Bradford testified that he was in loss prevention, security office for Cain-Sloan, a major department store in Nashville for more than 12 years. (Tr., Vol. 2, p. 75, lines 12-24)

Jimmie Bradford testified that the money Taylor had on him when he died was money he had won at the casino in Tunica. (Tr., Vol. 2, p. 77, lines 17-18) After Taylor’s death, he got a check for seven thousand four hundred dollars (\$7,400) from the police. (Tr., Vol. 2, p. 78, 6-7)

Jimmie Bradford testified that he discovered after his son’s death that Devin Jefferson had offered his co-conspirators money “after he found out that Taylor had been killed.” (Tr., Vol. 2, p. 81, lines 5-6)

Lieutenant Eric Freeman of the Memphis Police Department, hereinafter referred to as MPD, investigated the murder of Taylor Bradford and testified in this cause. When asked to describe the community surrounding the U of M, Freeman said:

Well, certain areas, there is a nicer, more affluent neighborhood, and then possibly maybe a couple of miles away, you've got a lower income neighborhood, high-crime areas . . . Tr., Vol. 2, p. 14, lines 11-14)

Freeman further explained that the higher crime area, called Orange Mound, is two or three miles from campus. (Tr., Vol. 2, p. 15, lines 3-5)

When asked where the shooting of Taylor Bradford took place, Freeman could not pinpoint the exact location because Taylor Bradford drove away after he was shot, but Freeman said it took place "outside of the dormitory area." (Tr., Vol. 2, p. 15, line 12) Freeman went on to say that "it was outside Mr. Bradford's dorm." (Tr., Vol. 2, p. 16, line 8)

Freeman testified that the robbery of Taylor Bradford was carried out by Devin Jefferson, Daeshawn Tate, Courtney Washington and Victor Trezevant. (Tr., Vol. 2, p. 17, lines 7-9) Freeman noted that his investigation indicated that the offenders went to Bradford's dorm area twice the night of the shooting. (Tr., Vol. 2, p. 17, lines 13-14) They apparently came to the campus the first time around 8:00 p.m., then left to go to a convenience store off campus to buy cigarettes and other things. (Tr., Vol. 2, p. 19, lines 13-15) The police think they returned to campus a little after 9:00 p.m. (Tr., Vol. 2, p. 19, lines 21-22) Apparently Devin Jefferson, who set up the robbery, "was watching to see when Mr. Bradford came out of his dorm room" (Tr., Vol. 2, p. 20 lines 1-3) so he could alert his co-conspirators.

One guy, Daeshawn Tate, called Taylor Bradford and walked up to talk to him on the driver's side of the car. (Tr., Vol. 2, p. 20, line 17- p. 21, line 3) Then another robber named Victor Trezevant went around to the passenger side and stuck a gun through the widow and said something like, "Give me your money." (Tr., Vol. 2, p. 21 lines 4-7)

Taylor Bradford then apparently tried to grab the gun, at which time he was shot. Bradford drove away in his car and then crashed on Zach Curlin off of Central. (Tr., Vol. 2, p. 21, lines 11-13) Freeman said they were not sure exactly where the perpetrators had parked. (Tr., Vol. 2, p. 24, lines 4-6) Freeman said he thought they parked "near the security gate," (Tr., Vol. 2, p. 37, line 6) but did not seem sure whether it was outside or inside the security gate surrounding Carpenter Complex.

Freeman further testified that the perpetrators had planned to commit the robbery the night before (September 29), but when one of the defendants got involved with his girlfriend, they postponed it until the next night, September 30. (Tr., Vol. 2, p. 18, lines 1-4)

When asked whether it was easy to get from the parking lot at Carpenter Complex to where Mr. Bradford lived, Freeman responded:

If you are out of your car walking, you can just walk around.
As far as driving, you can only get to certain points, because
we have the barriers with the crossing bars and security,
little booths. So you can only get to certain points.
(Tr., Vol. 2, p. 25, lines 11-16)

Freeman said based on his investigation, the perpetrators walked. (Tr., Vol. 2, p. 25, lines 19-21)

Freeman also acknowledged that there was a little "guard shack just outside of Carpenter Complex." (Tr., Vol. 2, p. 26, lines 18-23) Freeman said "most of the time there was somebody in the shack." (Tr., Vol. 2, p. 27, lines 4-5)

On cross examination, Freeman was asked where the more affluent neighborhood was in relation to where Taylor Bradford was. Freeman replied: "I would say back east of it is kind of the affluent neighborhood where it actually happened at." (Tr., Vol. 2, p. 29, lines 12-15)

Freeman also was asked what role, if any, Erica Bell played in the shooting. Freeman said she was Taylor Bradford's ex-girlfriend and offender Devin Jefferson's current girlfriend and that she had "given her parking pass to Devin and he had given it to the other defendants." (Tr., Vol. 2, p. 30, lines 20-21) Freeman said he assumed that the first time the defendants came into Carpenter Complex they were using Erica Bell's parking pass. (Tr., Vol. 2, p. 30, line 22- p. 31, line 1)

Freeman also stated that Devin Jefferson, a U of M student, told the other offenders that Mr. Bradford had some money on him and that they could rob him. (Tr., Vol. 2, p. 31, lines 10-13) Freeman said word had gotten around campus that Taylor Bradford had won the money at a casino. There also was a rumor he had borrowed the money. (Tr., Vol. 2, p. 32, lines 12-18)

Freeman stated that the police probably talked with Erica Bell and Devin Jefferson by the next day after Taylor was murdered. Freeman noted that Taylor and Devin Jefferson "had gotten into a fight earlier on campus." (Tr., Vol. 2, p. 34, lines 4-5)

Freeman testified the police never determined exactly when the fatal shot was fired because Taylor Bradford left the scene as soon as he was shot and hit a tree. (Tr.,

Vol. 2, p. 35, lines 12-18) Freeman couldn't recall that any witness reported hearing shots fired. (Tr., Vol. 2, p. 35, lines 19-20)

Freeman further testified that Taylor Bradford made a 911 call after the shooting. (Tr., Vol. 2, p. 37, lines 19-21) Freeman said he listened to the tape of the 911 call and you couldn't understand what Bradford was saying; "[i]t was more like somebody on the phone moaning." (Tr., Vol. 2, p. 38, lines 19-20)

Peter Groenendyk, director of residence life and dining services at U of M, testified on behalf of Defendant. Groenendyk was the associate director of residence life and dining services in 2007. (Tr., Vol. 4, p. 75, lines 16-17)

Groenendyk testified that all Resident Advisors, hereinafter referred to as RAs, attend a week and a half of training prior to the start of the fall semester, during which time they go through the RA manual in detail. (Tr., Vol. 4, p. 76, lines 12-24) In addition, each first-time RA takes a mandatory three-credit-hour class. (Tr., Vol. 4, p. 77, lines 1-3) One of the class sessions relates to observe and report and crime deterrence. (Tr., Vol. 4, p. 100, lines 2-6) Moreover, all RAs attend monthly in-service meetings and meet weekly with their supervisors. (Tr., Vol. 4, p. 77, lines 11-18) At the beginning of spring semester, there is another half-week to week of training. (Tr., Vol. 4, p. 77, lines 18-21)

Groenendyk testified that there are three RAs on duty in Carpenter Complex every night. (Tr., Vol. 4, p. 79, lines 2-3) "Their job is to walk the property at designated times and to report anything suspicious or any problems." (Tr., Vol. 4, p. 79, lines 3-5) They do this walk around the complex "a minimum of three times a night when they're on duty." (Tr., Vol. 4, p. 79, line 24- p. 80, line 1) Groenendyk further testified that

these patrols typically would take place when the RAs first come on duty, again between 10:00 and 11:00 p.m. and right before they get off work. (Tr., Vol. 4, p. 107, lines 10-13) He stated that when they do the patrols, the RAs fill out a log and sign it, a log which is checked by their assistant area coordinator. (Tr., Vol. 4, p. 107, lines 21-23) Groenendyk stated that the RAs regularly patrol Carpenter Complex—and did in 2007. (Tr., Vol. 4, p. 117, lines 13-23)

Groenendyk testified that each RA goes through a formal evaluation with his or her supervisor. (Tr., Vol. 4, p. 80, lines 12-16) They also receive informal feedback regarding how they handled a particular situation or incident. (Tr., Vol. 4, p. 80, lines 18-23) Groenendyk testified that U of M also requests feedback from residents on how the RAs are doing. (Tr., Vol. 4, p. 81, lines 4-5)

Groenendyk emphasized that if an RA handles an incident improperly, “it would be documented in the report, and we would provide corrective measures.” (Tr., Vol. 4, p. 82, lines 5-6)

Groenendyk testified that there is an RA manual in his department. (Tr., Vol. 4, p. 83, lines 18-19) On page 16 is a list of numbers to call; “everything from counseling to campus safety and crime numbers are on here.” (Tr., Vol. 4, p. 88, lines 13-14; Tr. Ex. 10) Groenendyk testified that if an RA alerts a staff member that a crime has been committed, the crime is reported to police services. (Tr., Vol. 4, p. 83, lines 3-8) He noted that if an RA dials HELP, the call goes directly to police dispatch. (Tr., Vol. 4, p. 84, lines 17-20)

When asked whether RAs were taught to observe and report suspicious activity, Groenendyk replied: “Yeah. That is one of the main parts of their job, and they are

required to under the Department of Education regulations as campus security . . ." (Tr., Vol. 4, p. 89, lines 13-16)

Groenendyk testified that the desk assistants assigned to Carpenter Complex sit in a booth. (Tr., Vol. 4, p. 90, lines 5-10) Residents can come to this desk to ask for assistance if they get locked out of their room or their heat goes out. (Tr., Vol. 4, p. 90, lines 17-18) In addition, desk assistants help look for and report suspicious behavior in Carpenter Complex. (Tr., Vol. 4, p. 90, line 24- p. 91, line 2)

Groenendyk stressed that although desk assistants sit in the booth 24/7, they are not able to open the gate themselves to allow traffic in. The decision about whether to let someone in can only be made by the police or the folks in parking. (Tr., Vol. 4, p. 91, line 12- p. 92, line14) Residents can enter the area by swiping their hang tag, which automatically opens the gate. (Tr., Vol. 4, p. 93, lines 1-4)

Groenendyk testified that when desk assistants are hired, they usually come in a day early for training. The training "consists of not only customer service training but going through the desk assistant manual." (Tr., Vol. 4, p. 94, lines 16-18) The manual has a chart indicating who to call in case of various emergencies. (Tr., Vol. 4, p. 94, lines 21-24) Groenendyk testified that desk assistants are evaluated "more often than RAs, in that our customers interact with them more often." (Tr., Vol. 4, p. 97, lines 4-6)

Groenendyk testified that James Cutter, who was on duty in the booth the night Taylor Bradford was killed, was both an RA and a desk assistant. (Tr., Vol. 4, p. 97, lines 22-p. 98, line 10)

Groenendyk testified that one of U of M's two main parking lots is located just outside Carpenter Complex. He said "most students choose to not pay the additional

thirty-five dollars [for a Carpenter Complex specific hang tag] and park on the other side and walk in.” (Tr., Vol. 4, p. 96, lines 21-23)

U of M police officer Robert Frans testified on behalf of the State. Frans testified that he began working at U of M in July, 2007, but had been a reserve officer with the MPD since 1986. (Tr., Vol. 4, p. 118, line 22- p. 119, line 9)

Frans testified that he was on the 3 p.m. to midnight shift in September, 2007. (Tr., Vol. 4, p. 120, line 22- p. 121, line 4) Frans stated that the shift starts with roll call, when they discuss “anything we might need to do to have added patrol or pay special attention to.” (Tr., Vol. 4, p. 121, lines 20-22) He said if he were told about a “hot spot” he would “try to be more visible in that area and maybe frequent it more often than normal.” (Tr., Vol. 4, p. 122, lines 2-3)

Frans noted, “Generally the patrol is left up to the officer if there isn’t something particular going on.” (Tr., Vol. 4, p. 122, lines 13-15) He said he tries to focus on places where he sees large concentrations of people and at or near fraternity areas on week-ends. (Tr., Vol. 4, p. 122, line 16- p. 123, line 2) He also tries to be visible “south of the tracks” to prevent robberies. (Tr., Vol. 4, p. 123, lines 5-8) Frans said the loop involving the streets Central, Zach Curlin, Walker and Patterson “is made many times.” (Tr., Vol. 4, p. 125, line 16) Frans testified that they also make routine patrols through Carpenter Complex. (Tr., Vol. 4, p. 126, lines 12-13)

With regard to the frequency with which he patrols Carpenter Complex, Frans stated:

And Carpenter Complex, actually I patrolled it, and generally tried to go through two to three times a day in between calls at certain times, right after the shift began and before the shift ended and at least once in the middle of that. (Tr., Vol. 4, p. 127,

lines 19-24)

Frans explained, "any dorm area we generally pay a lot more attention to." (Tr., Vol. 4, p. 128, lines 5-6)

Frans was asked how he was involved with what happened on September 30, 2007. Officer Frans said he was on patrol when he saw a vehicle that had crashed into a tree on Zach Curlin. (Tr., Vol. 4, p. 128, lines 16-18) Frans got out of his patrol car and saw Taylor Bradford laying there, so he called for paramedics and a fire department rescue unit because he couldn't open the car doors at first. (Tr., Vol. 4, p. 128, line 24-p. 129, line 4)

Frans testified that he noticed a spot of blood on the seat just to the right of Taylor Bradford, but it wasn't obvious where the blood was coming from. He noted that Taylor Bradford was unconscious the whole time. (Tr., Vol. 4, p. 129, lines 19-24) Frans said when he was able to get into the car, he saw a shell casing on the front floorboard, but he still had no idea that Taylor Bradford had been shot. (Tr., Vol. 4, p. 130, lines 1-8)

When the paramedic arrived, he emptied Taylor Bradford's pockets and handed Officer Frans a large sum of cash and Bradford's ID. (Tr., Vol. 4, p. 130, lines 17-20) It was then that Frans learned from the paramedic that Taylor Bradford had been shot. (Tr., Vol. 4, p. 130, lines 21-23)

When MPD arrived, Frans counted the money. There were "seventy-four one hundred dollar bills." (Tr., Vol. 4, p. 131, lines 8-9)

Frans testified that he knew the booth worker James Cutter, who would call campus police "frequently and was not afraid to call us." (Tr., Vol. 4, p. 132, lines 13-14)

Officer Frans testified that the lieutenant over shifts in September, 2007 “was big about us calling in the lots.” (Tr., Vol. 4, p. 135, lines 8-9) Frans explained that meant “[g]oing through and checking a parking lot to see if any vehicles had been broken into, looking for windows broke out, glass on the ground, . . .” (Tr., Vol. 4, p. 135, lines 11-14)

When asked to describe patrolling the loop around campus, Frans explained: “Some of them may be going in and out of the parking lots as I go around the loop.” (Tr., Vol. 4, p. 137, lines 10-11) When asked whether he would have gone inside the perimeter of the four main streets or just gone around the perimeter on a Sunday, Frans replied: “I wouldn’t have just done either. I would have done both.” (Tr., Vol. 4, p. 137, lines 20-21)

Frans testified that when he turned onto Zach Curlin and found Taylor Bradford at around 9:45 p.m., he was coming from a call in the fraternity area. (Tr., Vol. 4, p. 139, lines 3-16)

Bruce Harber, Director of Public Safety and Police Services at U of M, also testified for the State. Harber got his bachelor’s in police administration from U of M and will receive a master’s in strategic leadership this May. He also has completed coursework at other institutions such as the University of Virginia. (Tr., Vol. 5, p. 5, lines 1-7)

Harber became a police cadet with the MPD right out of high school in 1974. (Tr., Vol. 5, p. 5, lines 10-11) He worked at various times as uniform patrol, investigator in the detective bureau, trainer at the police academy, evening shift lieutenant, traffic investigator, field training officer at the academy. He retired from MPD in 2000. (Tr.,

Vol. 5, p. 5, line 18- p. 7, line 5) Harber was only retired for about a week when he was hired as Associate Director of Public Safety at U of M. (Tr., Vol. 5, p. 7, lines 17-23)

Harber outlined the training he has had in crime prevention practices. In 2000 his boss sent him to a 2 week training course on crime prevention through environmental design taught by Tim Crow. (Tr., Vol. 5, p. 8, lines 13-15) Harber explained that Crow "literally wrote the textbook on crime prevention and environmental design." (Tr., Vol. 5, p. 8, lines 17-18) In 2002, Harber went to a week-long training course on campus and university security in Louisville, Kentucky and took an advanced course on crime prevention through environmental design in 2006, when he became a certified CPTED specialist. (Tr., Vol. 5, p. 8, line 22- p. 9, line 5) Harber also attended the FBI's national academy. (Tr., Vol. 5, p. 11, lines 3-4)

Harber testified that he has taught a criminal justice course for U of M and has taught crime prevention through environmental design. (Tr., Vol. 5, p. 11, line 23- p. 12, line 18) Harber explained that CPTED means trying to design the built-in environment to design out crime. (Tr., Vol. 5, p. 13, lines 2-4)

Harber stated that he is responsible, in general, "for the public safety of the university." (Tr., Vol. 5, p. 14, lines 16-17) He said in 2007 he would have had around 30 or 31 officers working for him. (Tr., Vol. 5, p. 16, line 1) One of the officers is designated as a crime prevention coordinator. (Tr., Vol. 5, p. 17, lines 9-10) Harber testified that U of M police officers, like all university employees, are evaluated annually. (Tr., Vol. 5, p. 24, lines 4-6)

Harber testified that the U of M campus has 46 parking lots and 2 garages. (Tr., Vol. 5, p. 26, lines 5-6) Harber testified that U of M officers would patrol everything on the campus map. (Tr., Vol. 5, p. 29, lines 1-2)

With regard to security measures in place during 2007, Harber listed the following: gates with hang-tag access that keep people from entering the pedestrian-friendly areas of campus, cameras, lighting, Code Blue emergency phones. (Tr., Vol. 5, p. 29, lines 12-24) Harber also noted that some buildings have alarms and some have automated locking systems. (Tr., Vol. 5, p. 31, lines 1-3) And, of course, the U of M has police officers and residence hall staff. (Tr., Vol. 5, p. 31, lines 6-9) In 2007, U of M also had two observation towers, one of which was in the central lot. (Tr., Vol. 5, p. 33, lines 6-9) And that's on top of the desk/booth at the Carpenter Complex. (Tr., Vol. 5, p. 33, lines 13-15)

Harber further testified that presentations have been made to non-security staff, such as custodians and grounds keepers, to encourage them to keep an eye out and to report to campus security. (Tr., Vol. 5, p. 31, lines 10-14)

Harber also stated that U of M has a Tiger Escort service made up of student workers who provide escorts anywhere on campus, usually from dusk to 2 a.m. (Tr., Vol. 5, p. 32, lines 2-20) In addition, the U of M has a Silent Witness program, which allows a student to report suspicious behavior or a crime anonymously. (Tr., Vol. 5, p. 37, lines 1-7)

Harber stated that in 2007, there was a MPD reserve unit called University Station on the southwest quadrant of campus in Lot 15. (Tr., Vol. 5, p. 38, lines 5-19) It was located there because "crime was moving to the—has been, for years, moving

towards the university from the southwest.” (Tr., Vol. 5, p. 39, lines 3-5) It houses MPD’s auxillary officers, an MPD crime prevention person and a campus crime prevention officer. (Tr., Vol. 5, p. 39, lines 15-22) Harber testified that U of M has a Community Police Problem-Solving, or COPS, program. (Tr., Vol. 5, p. 40, lines 11-12) He said University Station was part of that program. (Tr., Vol. 5, p. 41, lines 3-5)

When asked about the neighborhoods around campus, Harber said the area north of Poplar is affluent, as is the area east of campus, and that campus police are targeting the neighborhoods south and west of campus. (Tr., Vol. 5, p. 42, line 10- p. 43, line 6) He noted that the area near Carpenter Complex is quite affluent, and that Carpenter Complex is bordered by the athletic fields of an exclusive, private boys’ school. (Tr., Vol. 5, p. 43, lines 7-14) Harber noted that “the crime in those areas is much lower than it is to our south and west.” (Tr., Vol. 5, p. 44, lines 1-2)

Harber stated that U of M was doing security assessments, CPTED surveys, in 2007. (Tr., Vol. 5, p. 46, lines 12-17) He said they were doing both site-specific assessments and more general assessments of “lots and grounds and more open spaces.” (Tr., Vol. 5, p. 49, lines 12-13)

When asked what would prompt a more general assessment, Harber gave the example of increased vehicle crimes in a parking lot. (Tr., Vol. 5, p. 49, lines 17-19) He explained: “We have a weekly map that we look at where we plot everything that’s happened. We actually have two maps; one is vehicle crimes, the other is thefts and burglaries.” (Tr., Vol. 5, p. 49, lines 20-23) Harber emphasized that these maps are reviewed weekly. (Tr., Vol. 5, p. 51, lines 4-6)

Harber said with regard to buildings, there is seldom a change in security threat unless a new activity moves into the building, such as a major public event there. (Tr., Vol. 5, p. 50, lines 4-9) Harber said they also track emerging crime issues. (Tr., Vol. 5, p. 51, lines 1-2)

Harber further testified that the security assessments also are sometimes done upon request from, for example, the dean of communication and fine arts. (Tr., Vol. 5, p. 51, lines 18-21) Harber also noted that he has done security assessments of parking garages to be sure there was an emergency phone on each level of the garage. (Tr., Vol. 5, p. 51, line 22- p. 52, line 2)

With regard to crime prevention education on campus in 2007, Harber testified that the crime prevention coordinator or officer spoke to parents who came to campus for freshmen orientation, as well as to the students themselves. (Tr., Vol. 5, p. 52, line 24- p. 53, line 16) These crime prevention specialists also do programming for student residents on campus and for new employees. (Tr., Vol. 5, p. 54, lines 1-14)

Harber testified that U of M does send out timely safety alerts as required by the Clery Act of 1990. (Tr., Vol. 5, p. 54, line 17- p. 55, line 6) They would send out such alerts if, for example, there was a robbery or a sexual assault. (Tr., Vol. 5, p. 55, lines 7-12)

With regard to the protocol for patrolling officers in 2007, Harber explained that they called their policy "directed patrol." (Tr., Vol. 5, p. 59, lines 4-5) Harber stated that every Friday representatives from campus police meet with representatives from MPD, with neighborhood liaisons and with representatives from campus to evaluate the week that has just passed and look forward to the week to come. He said they called it a

“COMP stat meeting,” like those held by the New York police department. (Tr., Vol. 5, p. 59, lines 15-20)

At these Friday meetings they look at MPD crime maps going back 3 or 4 weeks. (Tr., Vol. 5, p. 60, lines 20-23) Participants especially focus on any hotspots identified by the MPD. When there are hotspots on campus, they usually are south and west. (Tr., Vol. 5, p. 61, lines 9-17) The meeting then focuses on the campus specifically, on U of M’s crime maps. (Tr., Vol. 5, p. 62, lines 3-5)

On Monday morning, the command staff, which includes Director Harber, the deputy directory, the major and shift supervisors, and the coordinator of investigations hold another meeting. (Tr., Vol. 5, p. 62, lines 22-24; p. 63, lines 19-22) An update is given on any cases the campus police are working and participants talk about any focus areas identified. (Tr., Vol. 5, p. 63, lines 2-4) During the Monday meeting they discuss any issues affecting safety and security on campus. (Tr., Vol. 5, p. 64, lines 10-11)

At the beginning of each shift there is a meeting and roll call. The Lieutenants can then “direct their assignments that day based on what is going on.” (Tr., Vol. 5, p. 66, lines 16-17)

Harber stated that the primary focus in 2007 was parking lots, including the Carpenter Complex parking lot. But the primary focus on a Sunday night would have been the residential areas. (Tr., Vol. 5, p. 68, lines 10-23) He noted all the students live around the perimeter marked by the four major streets: Zach Curlin, Walker, Patterson and Central. (Tr., Vol. 5, p. 68, line 23- p. 69, line 4) Carpenter Complex, a residential facility, would have been patrolled on Sunday night. (Tr., Vol. 5, p. 70, line 24- p. 71, line 5) It would be considered primary because 500 residents live there. (Tr., Vol. 5, p.

72, lines 20-22) On cross-examination, Harber said that “the things that lie along these four streets, this is what I would call the perimeter of the campus, . . .” (Tr., Vol. 6, p. 159, lines 18-20)

Harber said Carpenter Complex is a dormitory, but “not a traditional dorm.” (Tr., Vol. 5, p. 73, line 20) It has townhouses and condominiums and has a lot of older students and a few athletes. (Tr., Vol. 5, p. 74, lines 2-16)

Harber enumerated the following security measures which were in place at Carpenter Complex in 2007: Resident Assistant patrol, booth with a desk worker, blue light emergency phones, police patrols, gated access, lights and camera recording the gate area. (Tr., Vol. 5, p. 76, line 8- p. 77, line 8)

Harber testified that the gate to Carpenter Complex can be opened with a hang tag and that students pay for access to specific lots. (Tr., Vol. 5, p. 78, lines 1-11) He noted that every student gets a general hang tag allowing them to park in “any of the yellow lots.” (Tr., Vol. 5, p. 81, line 23- p. 82, line 3)

When asked whether Carpenter Complex was gated for pedestrian traffic, Harber said that it is fenced on 3 sides and only open “from within university property.” (Tr., Vol. 5, p. 79, lines 11-12) He conceded it was common in 2007 for students to park in a yellow lot right outside of Carpenter Complex (Central lot) and walk in to avoid paying the extra fee. (Tr., Vol. 5, p. 79, line 15- p. 80, line 18; p. 84, lines 15-18) Harber said in 2007 you could cut across the Central lot if there were no vehicles in the way and there were not a lot of cars on Sunday nights. (Tr., Vol. 6, p. 164, line 20- p. 165, line 7)

When asked if there was a CPTED design to the Central lot in 2007, Harber stated that “[p]arts of it were CPTED design.” (Tr., Vol. 6, p. 166, line 19) He listed the

fact that the entrances to it were limited and the orientation of the booth worker as CPTED features. (Tr., Vol. 6, p. 166, lines 20-21)

Harber testified he believed there were 4 blue light phones in Carpenter Complex on September 30, 2007. (Tr., Vol. 5, p. 82, lines 21-24) He noted that CPTED standards were incorporated into the lighting, landscaping and fencing at Carpenter Complex. (Tr., Vol. 5, p. 86, line 24- p. 87, line 1)

Harber further testified that there was a sign in the Central lot in September, 2007 prohibiting weapons on the campus of U of M. (Tr., Vol. 5, p. 85, lines 16-24) There was also a U of M sign at Carpenter in accordance with the CPTED concept of "territorial reinforcement." (Tr., p. 87, line 9; p. 88, lines 1-4)

Bruce Harber testified they don't know exactly where Taylor Bradford was shot, but they believe it was probably 50 or 60 feet from one of the blue emergency phones. (Tr., Vol. 5, p. 91, lines 11-14) Taylor Bradford would have passed another blue phone on his way out of the complex. (Tr., Vol. 5, p. 92, lines 20-23)

Harber stated that the two robberies in late 2006 took place in lot 23, a very small yellow lot on the west side of campus between a half a mile and a mile from Carpenter Complex. (Tr., Vol. 5, p. 93, lines 1-24) He said at the time of these robberies, lot 23 was not gated, had no blue emergency phone, no booth or booth worker, no cameras and no residential assistant patrols. (Tr., Vol. 5, p. 94, line 1- p. 95, line 1)

Bruce Harber testified that he believed in response to the robberies, the campus security office issued safety alerts. (Tr., Vol. 5, p. 95, lines 5-6) He said operationally, "what we would have done was make sure we were adequately staffed," (Tr., Vol. 5, p. 96, lines 20-21) and notified MPD and asked for their help. (Tr., Vol. 5, p. 97, lines 8-9)

And he noted that he told his officers as early as 2004 “to pull into the parking lot, be as visible as you can, activate the blue lights.” (Tr., Vol. 5, p. 98, lines 11-13)

Harber was asked whether they did an assessment after the 2006 robberies to see if things needed to be done differently. He said they increased patrols, increased their visibility and made sure they had adequate staffing, including paying overtime. Then, in late 2008, they moved their police headquarters right next to lot 23. (Tr., Vol. 5, p. 103, lines 7-15) He said there were no robberies in lot 23 or on the south side of campus in 2007. (Tr., Vol. 5, p. 103, line 23- p. 104, line 1)

Harber was asked on cross-examination how often security vulnerability assessments would have been done in 2006 and 2007. He testified, “They would have been done . . . upon need, upon request, upon change or any transition.” (Tr., Vol. 6, p. 163, lines 10-12) Harber clarified that a transition would include a change in use of property or acquisition of new property. (Tr., Vol. 6, p. 163, lines 14-16)

Harber said that the 2006 robberies “would have alerted us to a problem with parking lots in general, but specifically that west side of campus.” (Tr., Vol. 5, p. 105, line 24- p. 106, line 3) He emphasized that “every week we assess what’s going on in all of the parking lots, but not specifically Carpenter because of lot 23.” (Tr., Vol. 5, p. 107, lines 1-3) He noted, “there were so many layers [of security] there at Carpenter.” (Tr., Vol. 5, p. 107, lines 14-15) He further testified that security vulnerability assessments on the U of M campus are “ongoing.” (Tr., Vol. 6, p. 193, line 19) “[W]e do an assessment every week of what’s going on and compare it to the prior three weeks and the rest of the year.” (Tr., Vol. 6, p. 194, lines 9-12)

Harber reiterated that after the 2006 robberies, they “would have focused on all the parking lots.” (Tr., Vol. 6, p. 195, lines 15-16)

With regard to the 2006 robberies, Harber said “the victims did not indicate that they knew anyone who was involved.” (Tr., Vol. 5, p. 108, lines 13-15) He said they did develop a suspect in one of the 2 robberies, but the victim could not identify him. (Tr., Vol. 5, p. 108, lines 16-22) Harber characterized these 2 robberies as [c]rimes of opportunity.” (Tr., Vol. 5, p. 109, line 8)

Harber stated that crime on the U of M campus has been “in a decline since 2000 or 2001.” (Tr., Vol. 5, p. 112, lines 13-14) He noted crime is down 26% since he started work at U of M. (Tr., Vol. 5, p. 112, lines 19-20)

Harber testified that there were 2 robberies on the U of M campus in 2007, Taylor Bradford’s in September and another in April when a student was leaving the 24 hour computer lab in the library. (Tr., Vol. 5, p. 114, line 22- p. 116, line 7) The April, 2007 robbery involved a knife; the offender there was apprehended. Harber said it was his memory that the offender was not a student, but the person driving the car he fled in may have been. (Tr., Vol. 5, p. 142, line 19- p. 144, line 23)

On cross examination, Harber was asked about the patrol area his officers were concentrating on the night Taylor Bradford was murdered. He said:

The primary patrol area would have been what I refer to as the perimeter, which is Central, Zach Curlin, Southern, Walker Patterson and the lots and residents’ facilities that kind of border that. (Tr., Vol. 5, p. 125, lines 16-20)

Ask whether the five patrol cars would have been just going around in that circle, Harber interjected, “[i]n and out of the lots.” (Tr., Vol. 5, p. 126, line 3)

Harber said he doesn't know whether the offenders in the 2006 robberies were U of M students because they were not apprehended. (Tr., Vol. 5, p. 140, lines 18-22)

IV. EXPERT TESTIMONY

John C. Villines, director of John C. Villines, LLC, an investigative and consulting firm, testified on behalf of Claimants as an expert. Mr. Villines worked as a security officer in the 1970s; he earned a degree in urban studies from Georgia State University with a concentration in criminal justice. He later got a master's in security management from Bellevue University and has taken post-master's courses in statistics and quantitative methods at Harvard. (Tr., Vol. 3, p. 10, lines 5-15) He also received a diploma in crime prevention from the University of Louisville School of National Crime Prevention Institute. (Tr., Vol. 3, p. 10, lines 21-23) Villines testified that he became post certified at the Georgia Police Academy and developed Georgia's Crime Prevention Specialist Training Program. (Tr., Vol. 3, p. 11, lines 2-5)

With regard to work experience, Villines started as a security guard at Phipps Plaza Shopping Center and worked his way up to executive director of security, overseeing security operations for Phipps. (Tr., Vol. 3, p. 13, lines 12-17) After that, he was in charge of security operations and maintenance at Marshall Property Development, then later went to work for Hudgins Management. (Tr., Vol. 3, p. 14, lines 2-23)

With regard to certifications, Villines earned certification as an International Crime Prevention Specialist, or ICPS. (Tr., Vol. 3, p. 15, line 8) He also became board certified in security management, CPP, or Certified Protection Professional, through

ASIS International. (Tr., Vol. 3, p. 15, lines 9-11) He also obtained a level 2 certification from the National Crime Prevention Council. (Tr., Vol. 3, p. 15, lines 12-14)

Villines testified that he has been under contract as a consultant with the United States Department of Justice since right after 911. His current contract runs through 2017. (Tr., Vol. 3, p. 17, lines 8-17) He also has done a lot of consulting for the Department of Navy regarding access controls and security hardware. (Tr., Vol. 3, p. 17, lines 21-24) Villines also has been a consultant for Chesapeake Public Telephone Company, Coca-Cola, CNN and others. (Tr., Vol. 3, p. 18, lines 1-6)

Although most of his time is spent doing consulting work, Villines has done security training for police and private sector security people. (Tr., Vol. 3, p. 18, line 7- p. 19, line 13) He could not recall doing consulting work for a university, though he has trained university police officers. (Tr., Vol. 3, p. 21, lines 4-8) He has done consulting work on litigation involving university campuses. (Tr., Vol. 3, p. 21, lines 1-4)

Villines has also written several published articles and a couple of book chapters. (Tr., Vol. 3, p. 21, line 22- p. 23, line 15) He has testified in trials many times, including on foreseeability and preventability of crime. (Tr., Vol. 3, p. 25, lines 4-5)

Mr. Villines opined that the death of Taylor Bradford on the campus of the U of M was reasonably foreseeable. (Tr., Vol. 3, p. 28, line 20- p. 29, line 2) In explaining his opinion, Villines emphasized that when assessing foreseeability he looks at prior incidents. (Tr., Vol. 3, p. 29, lines 4-5) He underscored that there were two crimes with “substantially similar variables involved, robberies involving firearms with students in parking lots at night with the perpetrators arriving and leaving in a vehicle.” (Tr., Vol. 3,

p. 29, lines 12-16) These two crimes occurred on the U of M campus in November and December, 2006. (Tr., Vol. 3, p. 30, lines 6-7)

One of these incidents involved a woman affiliated with U of M who was walking to her vehicle when males with sawed off shotguns got out of a vehicle and robbed her, then fled campus in the vehicle. It occurred around 10:30 p.m. on a Friday in a university parking lot. (Tr., Vol. 3, p. 34, lines 16-24)

The other incident, which occurred on December 4, 2006, was also a robbery. Two female students were on their way to their vehicles when two males, one armed with a shotgun, got out of a vehicle, demanded their money, and fled in the vehicle. (Tr., Vol. 3, p. 36, lines 9-18)

Mr. Villines testified he did not have enough information to know whether or not the 2006 robberies were carried out by students or non-students. (Tr., Vol. 3, p. 47, lines 8-9) Villines stated that Taylor Bradford was robbed by non-students. (Tr., Vol. 3, p. 47, line 12)

Villines testified that after reviewing the deposition of Bruce Harber, he concluded that U of M had not done a comprehensive security vulnerability assessment. (Tr., Vol. 3, p. 47, lines 16-17) Villines explained that such an assessment involves studying the actual prior criminal history at a location and the surrounding area, interviewing the users of that space, identifying risks, vulnerabilities and threats and coming up with a written security plan. In addition, it involves implementing a periodic review process or assessment to see if the security measures implemented have been effective in reducing or eliminating the risks. (Tr., Vol. 3, p. 47, line 20- p. 48, line 14)

Villines emphasized that these assessments usually are done by campus law enforcement personnel or by an independent contractor. (Tr., Vol. 3, p. 49, lines 6-8) He further noted they should be done “routinely.” (Tr., Vol. 3, p. 50, line 1) Villines went on to say that either of the robberies in late 2006 should have triggered an assessment. (Tr., Vol. 3, p. 50, lines 9-23) He said a reassessment should have been done monthly following these events or, at the very least, quarterly. (Tr., Vol. 3, p. 50, line 22- p. 51, line 1)

Villines opined that such an assessment should have been done for all of the parking lots at the U of M. (Tr., Vol. 3, p. 51, lines 2- p. 52, line 1) He further opined that the lack of an assessment more likely than not contributed to the violence that killed Taylor Bradford. (Tr., Vol. 3, p. 52, lines 7-12)

Villines also testified about access control measures which make it more challenging for the unwelcome to access a space. These include “natural barriers, artificial barriers, fences, gates, curbing. . .” (Tr., Vol. 3, p. 52, lines 23-24)

Villines noted that the offenders in this case borrowed a hang tag and used it initially to gain access to the Carpenter Complex parking lot. He noted a hang tag is a “much lower level of access control than having a bumper sticker or a windshield ID. . . which can’t be as easily transferred between parties . . .” (Tr., Vol. 3, p. 55, lines 9-11)

Villines further noted that the gate was staffed by a resident assistant instead of a trained security person or law enforcement person. (Tr., Vol. 3, p. 56, lines 8-13) Villines stated that the perpetrators apparently remained in the vicinity of the attack waiting for Taylor Bradford without being challenged. (Tr., Vol. 3, p. 56, lines 21-24) One of them shot Mr. Bradford and “again, unchallenged, left the property.” (Tr., Vol. 3,

p. 57, lines 4-5) He underscored that he saw no evidence “of metrics being in existence for evaluating whether or not the training [of the person in the guardhouse] is being received.” (Tr., Vol. 3, p. 67, lines 9-12) Villines noted that you can’t just train a person; you have to have some way of evaluating whether or not “they have internalized or received the training.” (Tr., Vol. 3, p. 67, lines 23-24)

Villines conceded on cross-examination that he did not know the cost for training someone who sits in the booth or guardhouse. (Tr., Vol. 4, p. 69, lines 15-17)

Villines testified that the parking lot did not exhibit the components of CPTED, crime prevention through environmental design. “[I]t allowed for ease of ingress and egress without the components of CPTED, some curbing and things that people would normally put in to create the labyrinth.” (Tr., Vol. 3, p. 57, lines 21-24)

Villines further opined that there was an absence of sufficient security measures in the parking lot at U of M to deter crime, detect crime that did occur and immediately apprehend perpetrators of crime. (Tr., Vol. 3, p. 59, lines 11-20)

Villines opined that the person in the guardhouse on September 30, 2007 “didn’t demonstrate the most basic compliance with observe and report.” (Tr., Vol. 3, p. 60, lines 9-11) He further noted that the person in the guardhouse “didn’t receive appropriate security training that I saw documented anywhere. . .” (Tr., Vol. 3, p. 61, lines 4-6) He opined that the RA’s failure to observe and report strongly contributed to Taylor Bradford’s death. (Tr., Vol. 3, p. 84, line 24- p. 85, line 6)

Villines also testified that peer-reviewed research indicates that putting a person in a police car patrolling is “largely ineffective.” (Tr., Vol. 3, p. 64, line 24- p. 65, line 1)

Villines opined that there were not adequate access controls on the campus of U of M on September 30, 2007. (Tr., Vol. 3, p. 68, lines 5-21)

When asked about monitoring of the campus using security cameras, Villines stated that unmonitored cameras like the ones at U of M are helpful in gathering evidence of a crime, but not in detecting and responding to suspicious behavior. Unmonitored cameras have a very limited effect in terms of deterrence. (Tr., Vol. 3, p. 69, lines 8-24) Monitored cameras, of course, are more of a deterrent, especially if signs indicate they are being monitored. (Tr., Vol. 3, p. 71, lines 7-22)

Villines stated that there were four or five officers patrolling the campus perimeter on September 30, 2007, but no one was patrolling the actual parking lots and no one was patrolling on foot. They were just doing random patrols. (Tr., Vol. 3, p. 74, lines 14-22) The patrol, he concluded, was not effective.

Villines noted that foot patrol is “an extremely efficient way of patrol to preventing crime.” (Tr., Vol. 3, p. 76, lines 10-16) Villines also stated they the patrol should have been constructed on the KOPER curve, or twelve to sixteen minutes in a certain area (like a parking lot) every two hours. (Tr., Vol. 3, p. 77, lines 5-9)

On cross examination, Villines testified that he had never served as a campus police officer and could not recall that he had ever been to U of M's campus. (Tr., Vol. 4, p. 5, lines 1-6)

Villines also opined that, in terms of foreseeability, it was “not necessarily significant” (Tr., Vol. 4, p. 29, line 11) that Carpenter Complex had less crime than other parts of U of M's campus.

Villines testified that he was not aware of any other murders or manslaughters on U of M's campus. (Tr., Vol. 4, p. 39, lines 13-17)

Villines confirmed on cross-examination that he based his finding of foreseeability on the two parking lot robberies in November and December, 2006. (Tr., Vol. 4, p. 41, lines 8-12) He acknowledged these two robberies were not in the Carpenter Complex parking lot. (Tr., Vol. 4, p. 42, lines 9-12)

August Joseph Washington, associate vice chancellor and chief of police for Vanderbilt University, testified as an expert for the State of Tennessee. Chief Washington received his bachelor's degree from the University of Southwestern Louisiana and a master's in criminal justice with a concentration in law enforcement administration from Grambling State University. (Tr., Vol. 6, p. 209, line 18- p. 210, line 3)

Washington testified that he worked first as a student officer at Southwestern Louisiana, then as a police officer. He later managed over 40 student officers there. (Tr., Vol. 6, p. 211, line 19- p. 212, line 7) He left there to become a police officer, then recruitment coordinator, then criminal investigator with the Lafayette, Louisiana police department. (Tr., Vol. 6, p. 212, lines 10-21)

Chief Washington left Lafayette to work as a public safety lieutenant with Portland Community College in Portland, Oregon. He was head of law enforcement and security on the main campus. He was also in charge of communication for all of the community colleges in the district. (Tr., Vol. 6, p. 213, lines 7-21) He left there to become director of safety and security at Reed College. He was responsible for such

areas as public safety officers, parking, crime prevention and implementation of a student officer program. (Tr., Vol. 6, p. 214, lines 10-15)

Washington went from Oregon to Indiana State University, where he was director of public safety and chief of police. He also was an adjunct professor in criminal justice and was involved with the Indiana Enforcement Academy, where he taught in the campus protection officers program. (Tr., Vol. 6, p. 214, line 23- p. 216, line 20)

In 1999, he moved to Florida Atlantic University, where he was chief of police for all of their campuses, with a combined 25,000 students. He was also responsible for the 911 communication system and director of traffic and parking. (Tr., Vol. 6, p. 217, lines 1-23) He moved from there to University of Southern California, where he was head of the operations division for the Department of Safety. (Tr., Vol. 6, p. 218, lines 17-19)

In 2005, he became chief of police at the University of Tennessee at Knoxville. (Tr., Vol. 6, p. 219, lines 13-15) He stayed there until 2009, when he was offered the job at Vanderbilt.

At Vanderbilt, Washington is responsible for safety and security of the campus and the hospital, as well as the university medical center and the children's hospital. (Tr., Vol. 6, p. 221, line 18-p. 222, line 4) Vanderbilt also has a clinic at the old 100 Oaks Mall, which has a lot of crime challenges. (Tr., Vol. 6, p. 222, lines 5-21) In addition, Washington has responsibility for a number of outlying satellite offices and for emergency preparedness at the university. (Tr., Vol. 6, p. 222, line 22- p. 223, line 8)

Washington has 100 sworn police officers under him, 71 community service officers, 19 communication officers and 100 full-time contract security personnel. (Tr., Vol. 6, p. 223, lines 14-22)

Chief Washington is a member of the Tennessee Association of Chiefs of Police and chairs the board for their university committee. (Tr., Vol. 6, p. 224, lines 14-23) He also is a member of the International Association of Campus Law Enforcement Administrators, or IACLEA. (Tr., Vol. 6, p. 225, lines 18-21)

Chief Washington testified that he has served as a security consultant in the past, but he has never been retained as an expert witness in a civil lawsuit. (Tr., Vol. 6, p. 227, lines 13-18)

When asked about honors and awards, Chief Washington testified that in 2008 he was named Director of the Year by IACLEA. (Tr., Vol. 6, p. 229, lines 8-10) He also received an award given by the Vanderbilt athletics department and received the Distinguished Faculty Staff Award at Vanderbilt. In 1994, he was given a Coast Guard professionalism award. (Tr., Vol. 6, p. 229, lines 10- 23) Washington testified that he is a member of the Alpha Phi Sigma National Criminal Justice Honor Society. (Tr., Vol. 6, p. 229, line 24- p. 230, line 1)

Washington is a member of the 100 Black Men of Middle Tennessee and recently was contacted by the *Campus Safety Journal* with the news that he is a finalist for Campus Law Enforcement Director of the Year. (Tr., Vol. 6, p. 230, lines 8-16) A copy of his curriculum vitae was made Trial Exhibit 14. (Tr., Vol. 6, p. 230, lines 21-24)

Chief Washington testified that he visited the U of M campus before forming his opinions in this case. (Tr., Vol. 6, p. 234, lines 1-4) He wanted to see their security

infrastructure and Carpenter Complex and to talk with Director Harber, especially about patrols. (Tr., Vol. 6, p. 235, lines 2-19)

Chief Washington opined that the crime against Taylor Bradford was not foreseeable. (Tr., Vol. 6, p. 237, line 18) He noted that one of the offenders, Devin Jefferson, "had serious ill will, intent to bring harm to Mr. Taylor Bradford." (Tr., Vol. 6, p. 237, lines 5-6) It was Jefferson who recruited his friends to rob Taylor Bradford and formulated a plan with them. (Tr., Vol. 6, p. 237, lines 7-13) Washington noted the offenders originally planned to carry out the robbery on Saturday and they obtained a hang tag from Taylor's former girlfriend, Erica Bell, to case the area. (Tr., Vol. 6, p. 238, lines 6-17)

Another factor Washington said he looked at was the location of the crime in Carpenter Complex. He said you can't look at the campus as a whole because, depending on your location on campus, "there's different levels of crime prevention." (Tr., Vol. 6, p. 240, lines 18-19) Washington noted that he looked at Carpenter Complex and the area adjacent to it. (Tr., Vol. 6, p. 240, lines 22-23)

Washington said when he viewed Carpenter Complex's criminal history, he did not see "any incident that took place at the Carpenter Complex that would lead me to believe that the murder of Taylor Bradford was foreseeable." (Tr., Vol. 6, p. 241, lines 5-8)

Washington also said he saw nothing in the two 2006 robberies that made Taylor Bradford's robbery and murder at the Carpenter Complex foreseeable. (Tr., Vol. 6, p. 241, lines 20-23) Washington emphasized that the 2006 robberies both were by suspects unknown to the victims and that the parking lot where they occurred on the

other side of the U of M campus was not gated. (Tr., Vol. 6, p. 242, lines 2-9) Washington stated he saw no indication in the earlier robberies that the offenders “wanted to bring true harm to either one of those victims.” (Tr., Vol. 6, p. 242, lines 12-14) Washington also emphasized that the lot where the 2006 robberies happened didn’t have a guard gate with controlled ingress and egress of vehicles. (Tr., Vol. 6, p. 242, lines 20-21)

Washington opined that the blue light phones in Carpenter are a deterrent to crime in that they give “a potential victim opportunity to gain help very quickly.” (Tr., p. 243, lines 18-19) Washington further opined that the cameras in Carpenter Complex were also a deterrent to crime. (Tr., Vol. 6, p. 243, lines 20-22)

Washington added that he did not see any indication that there were blue light phones or cameras in lot 23 where the 2006 robberies took place. (Tr., Vol. 6, p. 244, lines 9-11)

Washington further opined that the robbery at knifepoint near the library in April, 2007, did not make the murder of Taylor Bradford foreseeable. (Tr., Vol. 6, p. 244, lines 18-22)

Chief Washington opined that U of M had reasonable security measures in place at Carpenter Complex in September, 2007. He emphasized the “layered approach,” (Tr., Vol. 6, p. 245, lines 22-23), which included a trained gatekeeper, natural barriers and controlled ingress and egress of vehicles. (Tr., Vol. 6, p. 245, line 24- p. 246, line 10) He further noted that even the pedestrian entrances from Central parking to the Carpenter Complex were “designed to kind of funnel you into a certain area because it’s pretty secure on three sides.” (Tr., Vol. 6, p. 246, lines 14-15) Washington also noted

the presence of blue light phones and cameras, as well as resident assistants. (Tr., Vol. 6, p. 246, lines 17-20) He opined that even non-monitored cameras act as a deterrent. (Tr., Vol. 6, p. 257, lines 16-20)

Washington opined that in September, 2007 U of M's public safety department was "professional," with over half of its employees having been police officers for the city of Memphis. (Tr., Vol. 6, p. 246, line 21- p. 247, line 3) He further opined that the policies and procedures in place for patrol officers "were in line with accreditation standards." (Tr., p. 247, lines 18-19)

Washington also opined that Bruce Harber was highly qualified and competent to serve as director of U of M's police safety department. (Tr., Vol. 6, p. 248, line 8-p. 249, line 4) He further opined that the officers, who trained with the MPD and followed POST commission guidelines, were adequately trained. (Tr., Vol. 6, p. 249, lines 14-22) Washington further noted that U of M actually had a crime prevention officer (Tr., Vol. 6, p. 250, line 17) and that Harber and another person were CPTED certified. (Tr., Vol. 6, p. 250, lines 20-22)

Washington opined that U of M provided the members of the community with crime prevention materials and updates and that they were in compliance with the Clery Act. (Tr., Vol. 6, p. 251, line 15- p. 252, line 22) He also opined that U of M had effective patrol on September 30, 2007. He noted the requirement that 4 officers be on duty at all times and emphasized that 5 were actually on duty the night of Taylor's murder. (Tr., Vol. 6, p. 253, lines 2-10)

Washington opined that even if the murder of Taylor Bradford had been foreseeable, the security measures at Carpenter Complex were reasonable and sufficient. (Tr., Vol. 6, p. 255, line 1- p. 256, line 11)

When asked whether he was familiar with the concept of "security vulnerability assessments," Washington said it had to do with broad scope assessments for events like IT infiltration or utilities going down. (Tr., Vol. 6, p. 259, lines 5-15) He opined that the robberies of 2006 should have and did trigger an assessment of the areas around lot 23. (Tr., Vol. 6, p. 261, lines 7-10)

When asked about whether U of M should have used something other than hang tags, Washington stated that they tend to be preferred because they can be transferred from one vehicle to another. (Tr., Vol. 6, p. 261, line 19- p. 262, line 22)

Washington disagreed with Villines' assessment that the desk assistant in the booth did not demonstrate that he could observe and report. (Tr., Vol. 6, p. 263, line 18- p. 265, line 6) Washington observed that once the person in the booth saw the college-age perpetrators swipe the hang tag he would not, absent other factors, have reason to be suspicious of them. (Tr., Vol. 6, p. 265, lines 1-11) Washington said he would not consider the presence of a group of young men sitting in a car on a college campus suspicious. (Tr., Vol. 6, p. 267, lines 12-14)

Washington testified that desk assistant James Cutter said the only thing he saw that night that was suspicious was a Black Ford Explorer SUV parked outside Carpenter Complex for about five minutes. (Tr., Vol. 6, p. 270, lines 9-13) Washington noted that the case documents indicate the offenders were not driving a black SUV. (Tr., Vol. 6, p. 272, lines 8-12)

Washington opined that it is not necessary for U of M to gate all parking lots. (Tr., Vol. 6, p. 272, lines 17-19)

Washington conceded on cross-examination that he relied on Bruce Harber's representations that the RAs were adequately trained. (Tr., Vol. 6, p. 277, line 21- p. 278, line 4)

Chief Washington was asked on cross-examination if he had taken the time to review what the law states as it relates to foreseeability, to which he replied, "No sir." (Tr., Vol. 7, p. 315, line 15) He went on to say: "My testimony and my opinion is based on 30-plus years of experience and to what the industry expects of campus—of a campus law enforcement agency." (Tr., Vol. 7, p. 315, line 23- p. 316, line 2)

He said he was not aware that foreseeable in his profession as a campus security expert and foreseeable as a legal term are not the same. (Tr., Vol. 7, p. 319, lines 18-19)

Washington testified that it is common for students to work in guard booths like the one at Carpenter Complex, though he conceded no students work in public safety at Vanderbilt. (Tr., Vol. 7, p. 336, lines 7-19)

Washington testified that a premeditated crime, like the robbery of Taylor Bradford, is harder to deter and harder to foresee than a crime of opportunity like the robberies which took place in November and December, 2006. (Tr., Vol. 7, p. 354, line 4-p. 355, line 1)

V. Applicable Law

As stated, the Claimants bring their case against the State pursuant to **Tenn. Code Ann. § 9-8-307(a)(1)(C)** which reads as follows:

“(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of ‘state employees,’ as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the **foreseeability** of the risks and **notice** given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures.” (Emphasis supplied.)

The Claimant, therefore, under subsection (a)(1)(C), must establish both foreseeability of risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate avoidance measures.

At the very heart of any negligence action is the concept of foreseeability. In *Doe v. Linder Const. Co.*, 845 S.W.2d 173, 178 (Tenn. 1992), the Tennessee Supreme Court explained that the Claimant “must show that the injury was a reasonable probability, not just a remote possibility, and that some action within the [defendant’s] power more probably than not would have prevented the injury (citation omitted).”

The *Doe* court went on to say:

Negligence already has been defined as conduct which falls below a standard established by the law for the protection of others against unreasonable risk of harm. The idea of risk in this context necessarily involves a recognizable danger, based upon some knowledge of the existing facts, and some reasonable belief that harm may possibly follow. Risk, for this purpose, may then be defined as a danger which is apparent, or should be apparent, to one in the position of the actor. The actor’s conduct must be judged in the light of the possibilities apparent to him at the time, and not by looking backward “with the wisdom born of the event.” The standard is one of conduct, rather than of consequences. It is not enough that everyone can see now that the risk was great, if it was not apparent when the

conduct occurred. 5 Prosser and Keeton, *The Law of Torts* § 31, p. 170 (1984) (footnotes omitted). *Id.*

Further, a claim for negligence under Tennessee law requires proof of five (5) distinct elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct falling below the applicable standard of care which amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal, cause. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991).

In *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891 (Tenn. 1996), the Tennessee Supreme Court analyzed "...the standard for determining...liability for injuries occurring on the business premises and caused by the criminal acts of third parties." *Id.* at 893 Admittedly, this issue is a difficult area of the law in terms of duty and an alleged breach thereof as well as the subsequent issues of cause in fact and legal cause.

The Court in *McClung* underscored the following language from its 1992 decision in *Doe v. Linder Const. Co., Inc., supra*:

"In this regard, we have observed that '[t]he term reasonable care must be given meaning in relation to the circumstances. Ordinary, or reasonable, care is to be estimated by the risk entailed through probable dangers attending the particular situation and is to be commensurate with the risk of injury.'" *McClung, supra*, at 895, quoting *Linder, supra*, at 178.

Following an exhaustive discussion of the manner in which other jurisdictions had approached the issue of the duty of a premises owner to protect against criminal acts of third parties, the Tennessee Supreme Court posited the following basic duty standards against which to assess the facts in subsequent cases:

“After careful consideration of the jurisprudence of other jurisdictions and our own, we adopt the following principles to be used in determining the duty of care owed by the owners and occupiers of business premises to customers to protect them against the criminal acts of third parties: A business ordinarily has no duty to protect customers from the criminal acts of third parties which occur on its premises. The business is not to be regarded as the insurer of the safety of its customers, and it has no absolute duty to implement security measures for the protection of its customers. However, a duty to take reasonable steps to protect customers arises if the business knows, or has reason to know, either from what has been or should have been observed or from past experience, that criminal acts against its customers on its premises are reasonably foreseeable, either generally or at some particular time.

In determining the duty that exists, the foreseeability of harm and the gravity of harm must be balanced against the commensurate burden imposed on the business to protect against that harm. In cases in which there is a high degree of foreseeability of harm and the probable harm is great, the burden imposed upon defendant may be substantial. Alternatively, in cases in which a lesser degree of foreseeability is present or the potential harm is slight, less onerous burdens may be imposed. By way of illustration, using surveillance cameras, posting signs, installing improved lighting or fencing, or removing or trimming shrubbery might, in some instances, be cost effective and yet greatly reduce the risk to customers. ... In short, ‘the degree of foreseeability needed to establish a duty decreases in proportion to the magnitude of the foreseeable harm’ and the burden upon defendant to engage in alternative conduct. ... ‘As the gravity of the possible harm increases, the apparent likelihood of its occurrence need be correspondingly less to generate a duty of precaution.’ ... The degree of foreseeability needed to establish a duty of reasonable care is, therefore, determined by considering both the magnitude of the burden to defendant in complying with the duty and magnitude of the foreseeable harm.

As a practical matter, the requisite degree of foreseeability essential to establish a duty to protect against criminal acts will almost always require that prior instances of crime have occurred on or in the immediate vicinity of defendant’s premises. Courts must consider the location, nature, and

extent of previous criminal activities and their similarity, proximity, or other relationship to the crime giving rise to the cause of action. To hold otherwise would impose an undue burden upon merchants.” (Citations omitted.) (Emphasis supplied.) *McClung, supra*, at 901-902.

Both *McClung* and those cases which have followed provide guidance in implementing the balancing approach. The Court in *McClung* noted that both the frequency and nature of criminal activity in the vicinity of a criminal attack are relevant. In addition to the imminent threat of criminal acts by third parties, other questionable conditions are also relevant to and should factor into the analysis of foreseeability. *Id.* at 899

A threshold inquiry regards the extent of the geographic area which must be considered in terms of prior criminal activity. The fact finder will almost always be required to consider prior instances of crimes which “...have occurred on or in the immediate vicinity of defendant’s premises.” *Id.*, at 902

The Court of Appeals later addressed this geographic vicinity issue in *Patterson-Khoury v. Wilson World Hotel-Cherry Rd. Inc.*, 139 S.W.3d 281 (Tenn. Ct. App. 2003). In that case, the plaintiff had been stabbed multiple times in a hotel hallway in Memphis. The trial court limited the area for consideration of prior criminal activity to the immediate vicinity of the defendant hotel and excluded testimony regarding criminal conduct in a wider area, including the grounds of an adjacent hotel and the nearby Mall of Memphis.

The Court of Appeals affirmed the trial court’s more restrictive area of consideration but indicated that each case is best left to the consideration of the individual trial court. In delineating the relevant area for consideration, the court wrote:

“Although evidence of crime in the ‘immediate vicinity’ is relevant and admissible to determine foreseeability, clearly evidence of crime on the property itself is the best evidence. Neither the McClung nor Staples [***Staples v. CB&L Associates***, 15 S.W.3d 83 (Tenn. 2000)] Courts defined ‘immediate vicinity,’ and we do not seek to limit or define the term here. We believe that determination is best left to the trial court in consideration of the circumstances of each case. In light of the totality of the evidence admitted in this case, we cannot say the trial court abused its discretion in limiting the scope of evidence regarding prior criminal acts.” ***Patterson-Khoury, supra.***, at 288. (Emphasis supplied.)

The ***Staples*** case, cited in ***Patterson-Khoury***, involved the attempted abduction of a female customer at the Hamilton Place Mall in Chattanooga, Tennessee. The ***Staples*** court acknowledged the balancing approach developed in ***McClung***, but pointed out that while prior criminal incidents are important, they are only one factor to be considered by the courts and do not by themselves establish a duty. ***Staples, supra***, at 91, n. 3

McClung itself dealt with a gruesome set of facts in which Mrs. McClung was abducted from a shopping center parking lot in Memphis, placed in the trunk of her automobile, raped and eventually murdered. The court’s description of this shopping area’s “rap sheet” follows:

“In the seventeen months prior to the abduction, the numerous reports of crime to police on or near defendants’ premises included a bomb threat, fourteen burglaries, twelve reports of malicious mischief, ten robberies, thirty-six auto thefts, ninety larcenies, and one attempted kidnapping on a parking lot adjacent to defendants’ parking lot. All of these crimes occurred on or in the immediate vicinity of defendants’ parking lot, took place within a relatively short period of time prior to the abduction of plaintiff’s wife, and involved a significant threat of personal harm. The record also establishes that defendants’ premises was located in a high crime area, and that other nearby major retail centers

utilized security measures to protect customers.” **McClung** at 904.

Following our Supreme Court’s decision in **McClung**, the plaintiff non-suited his state court action and re-filed the case against Wal-Mart stores in the United States District Court in Memphis. See **McClung v. Wal-Mart Stores, Inc.**, 270 F.3d 1007 (6th Cir. 2001).

Subsequent state court cases have indicated that life cannot be lived in a protective bubble, and that not every questionable security circumstance will result in liability to the premises owner. For example, in **Hepp v. Joe B’s, Inc.**, 1997 WL 266839 (Tenn. Ct. App. 1997), Court of Appeals affirmed a grant of summary judgment in favor of the business owner in a case in which a young woman suffered a broken ankle when a fight broke out among billiards players in a sports bar in Clarksville, Tennessee. The Court found that the owner had provided adequate security for a bar setting and that the staff had moved quickly to stop the altercation which resulted in plaintiff’s injury. With regard to the plaintiff’s allegation that loud music in the bar somehow contributed to her injury, the court correctly observed that “persons patronize sports bars and night clubs for their ambiance which includes crowds, loud music, and the availability of alcoholic beverages.” *Id.* at p. 5.

Again, in **Shofner v. Red Food Stores (Tennessee), Inc.**, 970 S.W.2d 468 (Tenn. Ct. App. 1997), the Court of Appeals affirmed a jury verdict in favor of a food store whose parking lot had become a meeting place for young people to congregate in and drink beer. An altercation occurred at this site during which a young man was shot and killed. The venue was sufficiently known to law enforcement officers to warrant a pre-shooting visit by a police officer who did not disperse the crowd. In affirming the

jury verdict in favor of the defendant store, Judge Koch observed that “this court can not conclude that criminal acts against the shopping center’s customers are reasonably foreseeable simply because young people hang out in a remote area of the parking lot and drink some beer.” *Id.* at 471

McClung states that each case, including the case at bar, requires us to engage in a balancing exercise to determine whether the risk that the Claimant faced was reasonably foreseeable and of sufficient gravity to warrant more attention and prophylactic actions than the Defendant had taken.

VI. Factors to Consider in Determining the Presence or Absence of Liability.

Those factors which enter into the balancing approach which we believe apply in this case will be identified and discussed briefly before setting out the decision in this case.

A. The physical layout and setting of the attack.

Taylor Bradford, a 21 year-old a transfer student at U of M and member of the football team (Tr., Vol. 1, p. 45, line 16- p. 46, line 3), was in his car in the Carpenter Complex parking lot on September 30, 2007, when he was fatally shot during a failed robbery attempt. He had on his person some seven thousand four hundred dollars (\$7,400) he won at casinos in Tunica, Mississippi.

The Carpenter Complex where Taylor Bradford lived is located in one of the safer areas of campus. (Tr., Vol. 5, p. 44, lines 1-2) It is fenced on three sides and has a single vehicle entrance staffed by a desk assistant. (Tr., Vol. 4, p. 90, lines 5-18) There is a gate with an electronic arm which can be opened by a hang tag issued to U of M students who pay extra for the privilege of parking in Carpenter Complex. (Tr., Vol. 4, p.

93, lines 1-4) There are several blue light telephones which can be used to call for emergency help from campus police and three resident assistants patrol the Carpenter Complex lot every evening. (Tr., Vol. 5, p. 82, lines 21-24; Vol. 4, p. 79, line 2- p. 80, line 1) In addition, the lot is patrolled regularly by campus security. (Tr., Vol. 5, p. 125, line 16- p. 126, line 5)

Adjacent to the Carpenter Complex is the Central parking lot. The Central lot has an Observation Tower which, while not staffed on Sunday nights, has a camera pointed at the license plates of departing cars. (Tr., Vol. 5, p. 33, lines 8-9; Vol. 6, p. 174, lines 3-18)

Claimant's expert, John C. Villines, a private security consultant, opined that the parking lot where the robbery/murder of Taylor Bradford took place did not exhibit the components of CPTED, crime prevention through environmental design. (Tr., Vol. 3, p. 57, lines 21-24)

Villines pointed out that the gate was staffed by a student desk assistant rather than campus security personnel. He stated he saw no metrics for evaluating whether or not the training of resident assistants and desk assistants was being received by them. Villines testified he did not see evidence that desk assistants and RAs were properly trained to observe and report. (Tr., Vol. 3, p. 60, lines 9-11) Villines conceded he did not know the cost of properly training persons to sit in the booth. (Tr., Vol. 4, p. 69, lines 15-17)

B. General Measures taken by U of M to provide for students' safety.

In 2007, U of M had a full-time campus police department augmented by resident assistant patrols and Tiger Escorts who walk students from one part of campus to

another after dark. (Tr., Vol. 5, p. 32, lines 2-20) Further, presentations were made to non-security staff, such as custodians and grounds keepers, encouraging them to keep an eye out for and to report suspicious activity to campus security. (Tr., Vol. 5, p. 31, lines 10-14) U of M also had a "silent witness" program which allows students to report suspicious behavior anonymously. (Tr., Vol. 5, p. 37, lines 1-5)

Further, there is testimony in the record that the U of M campus security department worked in close association with the MPD in assessing and coordinating various measures for the protection of the University. In fact, in 2007 a reserve unit of MPD actually was located on the southwest quadrant of campus. (Tr., Vol. 5, p. 38, lines 5-19)

Chief Harber stated that campus security did a weekly review of crime maps in order to plot what has happened on and around campus and to track emerging crime issues. (Tr., Vol. 5, p. 49- p. 51, line 6) They also did site-specific security assessments and CPTED surveys. (Tr., Vol. 5, p. 46, lines 12-17) In addition, every Friday, representatives from campus security met with representatives from MPD, various campus groups and neighborhood liaisons to evaluate the preceding week and look forward to what might be needed in terms of security and patrols in the coming week. (Tr., Vol. 5, p. 59, lines 4-20) The participants in the meeting looked at any "hotspots" identified by the MPD which might need special attention from campus security. (Tr., Vol. 5, p. 61, lines 3-17) Then on Monday morning Chief Harber met with his command staff to update them on specific cases and on any areas identified as "hotspots" in the Friday meeting. (Tr., Vol. 5, p. 62, line 22- p. 63, line 4)

Harber testified that a campus crime prevention coordinator or officer spoke to both students and parents about campus safety during orientation. (Tr., Vol. 5, p. 52, line 24- p. 53, line 16) Campus security also sent out safety alerts to students if, for example, there was a robbery or sexual assault on campus. (Tr., Vol. 5, p. 54, line 17- p. 55, line 12)

C. History of Crime in the Area

Claimant's expert John C. Villines testified that, in his opinion, what happened to Taylor Bradford on U of M's campus was reasonably foreseeable. (Tr., Vol. 3, p. 28, line 20- p. 29, line 2) He opined that there were two robberies (which occurred in November and December of 2006) relevant in determining whether what happened to Taylor Bradford on September 30, 2007, was foreseeable. Villines emphasized that these were two crimes with "substantially similar variables, involved robberies involving firearms with students in parking lots at night with perpetrators arriving and leaving in a vehicle." (Tr., Vol. 3, p. 29, lines 12-16)

Chief Harber testified that the 2006 robberies took place in parking lot 23, which was very different geographically from the Carpenter Complex where Taylor Bradford was murdered. He said lot 23, located on the west side of campus between a half a mile and a mile from Carpenter, was not gated, had no blue emergency phones, no booth or booth worker/desk assistant, no cameras and no patrols by resident assistants. (Vol. 5, p. 94, line 1- p. 95, line 1)

Villines noted that after reviewing the documents submitted to him, he had concluded that following the two late 2006 robberies, U of M officials had not done a comprehensive security vulnerability assessment. (Tr., Vol. 3, p. 47, lines 16-17)

Villines insisted that either of these two robberies should have triggered such an assessment, with monthly or quarterly reassessments. (Tr., Vol. 3, p. 50, line 9- p. 51, line 1) Villines opined that the failure to perform such an assessment contributed to the violence that killed Claimant. (Tr., Vol. 3, p. 52, lines 7-12)

Chief Harber testified that campus security does weekly assessments using the crime maps and insisted they did do an assessment after the 2006 robberies to see what changes they needed to make. He said they increased patrols, increased the visibility of patrol officers and made sure they had adequate staffing, including paying overtime. Then, in late 2008, campus security moved its headquarters right next to lot 23. (Tr., Vol. 5, p. 103, lines 7-15) Chief Harber insisted that the 2006 robberies “would have alerted us to a problem with parking lots in general, but specifically with the west side of campus.” (Tr., Vol. 5, p. 105, line 24- p. 106, line 3) He further noted that the parking lot at Carpenter Complex had many layers of security not present in lot 23. (Tr., Vol. 5, p. 107, lines 14-15)

Chief Harber testified that focus of the patrol officers on the night Taylor Bradford died would have been the perimeter of campus and the lots and residents’ facilities that border them, including Carpenter Complex. (Tr., Vol. 5, p. 125, lines 16-20)

Harber emphasized that the victims in the 2006 robberies gave no indication they knew any of the offenders and characterized the robberies as “crimes of opportunity.” (Tr., Vol. 5, p. 108, line 16- p. 109, line 8) In contrast, the robbery of Taylor Bradford was a conspiracy between Taylor Bradford’s ex-girlfriend’s new boyfriend and some of his high school friends. (Tr., Vol. 2, p. 30, line 11- p. 31, line 13; p. 67, lines 11-20)

Defendant's expert, August Joseph Washington, is associate vice chancellor and chief of police for Vanderbilt University in Nashville, Tennessee, noted that the crime in the instant case clearly was not a crime of opportunity. He said one of the offenders "had serious ill will, intent to bring harm to Mr. Taylor Bradford." (Tr., Vol. 6, p. 237, lines 5-6) Washington stated that the 2006 robberies, in contrast, were carried out by suspects unknown to their victims. (Tr., Vol. 6, p. 242, lines 2-9) Washington opined that premeditated crimes, like the robbery that cost Taylor Bradford his life, are harder to deter and harder to foresee than crimes of opportunity like the 2006 robberies. (Tr., Vol. 7, p. 354, line 4- p. 355, line 1)

He said the location of the crime was very important because different locations on the U of M campus have "different levels of crime prevention." (Tr., Vol. 6, p. 240, lines 18-19) For example, lot 23 where the 2006 robberies occurred didn't have a guard gate with controlled ingress and egress of vehicles. (Tr., Vol. 6, p. 242, lines 20-21) He also noted that Carpenter Complex had additional crime deterrents, including cameras, blue light phones, natural barriers, and patrols by RAs, which were not present in lot 23 (Tr., p. 243, lines 18-22; p. 244, lines 9-11)

Chief Washington opined that the 2006 robberies should have and did trigger a security assessment of the areas around lot 23. (Tr., Vol. 6, p. 261, lines 7-10)

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause in person and via Skype, the arguments of counsel and, indeed, the entire record as a whole. After

carefully weighing the credibility of each of the witnesses, the Commissioner makes the following findings of fact.

This is a difficult case. It is unrefuted that Taylor Bradford suffered fatal injuries on September 30, 2007, when he was robbed at gunpoint while sitting in his car in the Carpenter Complex parking lot at U of M. It is also unrefuted that this robbery was planned by Devin Jefferson, the new boyfriend of Claimant's ex-girlfriend, Erica Bell.

One factor which the *McClung* decision requires the Commission to consider here is the incidence and proximity of crime in the "immediate vicinity" of the attack on Taylor Bradford. *McClung, supra, Patterson-Khoury, supra, and Staples, supra*, all discuss the parameters of the term "immediate vicinity" in the context of the foreseeability of a criminal attack by a third party.

The Commission rejects the notion that the relevant geographic area includes the high crime area of Orange Mound, some two miles from campus, or even the entire U of M campus. Defendants presented unrefuted evidence that this crime took place on one of the safer areas of campus. The Commission **FINDS** that the relevant geographic area in this case includes the entire Carpenter Complex and parking area, the large Central lot right outside of Carpenter Complex and the area within one hundred (100) yards of Carpenter Complex.

The Claimants have presented no evidence of crimes committed within this geographic area. Claimant's expert, John Villines, testified that the 2006 robberies in lot 23 were the only crimes he reviewed on the U of M campus which he considered relevant to the issue of foreseeability. These crimes occurred in a part of campus which Chief Harber testified was a "hotspot," (Tr., Vol. 5, p. 103, lines 13-19) and which is

outside of the geographic zone established here. As stated by the Tennessee Supreme Court in *McClung*,

the requisite degree of foreseeability essential to establish a duty to protect against criminal acts will almost always require that prior instances of crime have occurred on or in the immediate vicinity of defendant's premises. *McClung, supra*, at 902.

Here in the absence of any evidence of crime in the immediate vicinity, the Commission must **FIND** that the death of Taylor Bradford was not foreseeable.

Even if the Commission considered the relevant area to be the entire U of M campus, the robberies in lot 23 would not necessarily make the robbery/murder of Taylor Bradford in the Carpenter Complex foreseeable. In 2006, lot 23 had almost no security measures, aside from campus police patrols and Tiger escorts. Unlike Carpenter Complex, there was no gate with hang tag access and no booth or booth keeper. There were no blue light phones and no regular patrols by resident assistants. Comparing the security in lot 23 with the security measures in place in the Carpenter Complex is truly akin to comparing apples and oranges.

In summary, the 2006 events in lot 23 are not properly a part of the immediate vicinity of Carpenter Complex, and therefore not part of the *McClung* analysis. Even if they were, however, the differences in the security measures in place in the two locations were so vast that the crimes in lot 23 in and of themselves would not put U of M on notice that something as violent as what happened to Taylor Bradford was foreseeable in Carpenter Complex.

In addition, the nature of the crimes in lot 23, although nighttime robberies at gunpoint in which the offenders left in a vehicle, were very different from the attack on Taylor Bradford. According to Chief Harber, there was no evidence the offenders in the

lot 23 robberies knew their victims. (Tr., Vol. 5, p. 108, lines 13-15) These robberies were apparently true crimes of opportunity. In contrast, Taylor Bradford's murderers carefully planned the robbery against him specifically. It appears that Devin Jefferson, who was then dating Bradford's ex-girlfriend, informed some high school friends that Taylor Bradford had on his person a wad of cash he had won at the casino. (Tr., Vol. 2, p. 31, lines 10-13) Thus, the offenders in this case were not in the parking lot waiting to rob whoever happened to look the most vulnerable or available; they planned to point their guns at this particular healthy football player and take his money.

The facts in *McClung*, *Patterson-Khoury*, and *Staples* all illustrate that an initial *mens rea* directed toward stealing can unfortunately evolve into physical violence and even death. The magnitude of the possible harm to a student such as Taylor Bradford from such an escalation is quite dramatic. In this case, we believe that the University was put on notice that it had a problem site on its hands, but that problem site was in the vicinity of lot 23 and not the Carpenter Complex. As has already been noted, there are no documented criminal events at all in the record in and around the Carpenter Complex.

The Commission therefore **FINDS** that Claimants have not proven by a preponderance of the evidence that the attack on Taylor Bradford was reasonably foreseeable even if the entire campus is considered part of the immediate vicinity.

Even if the 2006 robberies made the brutal 2007 attack on Taylor Bradford foreseeable, Claimants have not established that U of M breached its duty. Because it was a Sunday evening, the security patrols would have been concentrating on the residential areas and the surrounding parking lots, including Carpenter Complex. (Tr.,

Vol. 5, p. 125, line 16-p. 126, line 3) Claimants argue that it couldn't have been a very effective patrol if 5 officers were on duty and not one heard the shooting. But that appears to have been nothing more than bad luck. In addition, Carpenter Complex had periodic patrols by the resident assistants, a gate with hangtags which controlled ingress and egress, a booth staffed by desk assistant, lights and cameras. (Tr., Vol. 5, p. 76, line 8- p. 77, line 8)

Moreover, there is little evidence in the record regarding specific adjustments which U of M could have made in the CPTED features of Carpenter Complex or its security presence after the 2006 robberies to establish a breach of its duty, and there was no evidence of what any of the adjustments would have cost. Villines does opine that U of M should have used bumper stickers or windshield stickers instead of hang tags for access to parking lots (Tr., Vol. 3, p. 55, lines 9-11), and should have employed a properly trained security or law enforcement person in the booth instead of a student desk assistant. (Tr., Vol. 3, p. 56, lines 8-13) However, the evidence did not even establish that the offenders actually used the hang tags when they arrived at Carpenter Complex to rob Taylor Bradford; they may have parked in the Central lot just outside of Carpenter Complex and walked in. (Tr., Vol. 2, p. 36, line 23-p. 37, line 10) And although Villines stated that the desk assistant "didn't demonstrate the most basic compliance with observe and report," (Tr., Vol. 3, p. 60, lines 9-11), he points mainly to James Cutter's failure to call in what he later referred to as a suspicious car. (Tr., Vol. 3, p. 82, line 20- p.83, line 10) However, that car was not the car the offenders were driving the night they robbed and killed Taylor Bradford, so it is difficult to see how this alleged breach of duty could be the legal cause of the murder. Moreover, again,

Claimant's expert offered no evidence of the cost for such training or the change in personnel. (Tr., Vol. 4, p. 69, lines 15-17)

Villines also opines that the patrols were largely ineffective and notes that the 4 or 5 officers working that night were patrolling the perimeter of the campus, but not the parking lots themselves. However, both Officer Frans, who was on duty the night of September 30, 2007, and Chief Harber, testified that the officers did patrol the parking lots as well as the perimeter of campus. (See Tr., Vol. 4, p. 137, lines 10-21; Tr., Vol. 5, p. 29, lines 1-2) Harber further testified that the focus on Sunday night patrols would have been the residential areas of campus like Carpenter Complex. (Tr., Vol. 5, p. 70, line 24- p. 71, line 5)

With regard to CPTED changes in the parking lot, Villines testified vaguely that the Central lot lacked "some curbing and things that people normally put in to create the labyrinth." (Tr., Vol. 3, p. 57, lines 21-24) He proffered no testimony on the cost of creating this labyrinth. Harber testified that *parts* of the Central lot were CPTED designed back in 2007. (Tr., Vol. 6, p. 166, line 19)

One main suggestion offered by Claimant's expert was that a comprehensive security assessment should have been done after the 2006 robberies, followed by periodic reassessments. (Tr., Vol. 3, p. 50, line 9- p. 51, line 1) However, both Chief Harber (Tr., Vol. 5, p. 103, lines 7-15) and Defendant's expert (Tr., Vol. 6, p. 261, lines 7-10) testified, and the Commission **FINDS**, that an assessment was done and appropriate security changes made after those 2006 robberies.

This is not to say that every unfortunate criminal attack involving a student at a state educational institution in Tennessee will result in a dismissal of the claim. Each case will rise or fall on a particularized analysis based on its own facts.

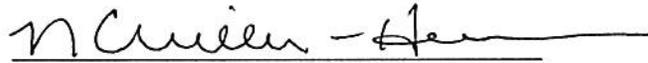
Of all the facts in this case, the one that was the clearest was this: Taylor Bradford was a smart, talented, hard-working and much loved young man with an extremely bright future. This world is much poorer without him in it. Despite the fact that he was a transfer student at U of M, he had put himself in a position to graduate from U of M just four years after he graduated from high school. In addition, his entrepreneurial spirit, evidenced even while he was in high school, and his strong work ethic, made it more likely than not that he would have graduated from college and been a strong force in the business world. Because of this and because of Taylor Bradford's pain and suffering and the enormous loss of consortium damages established by his parents' testimony, the Commission **FINDS** that if there had been a finding of negligence, Claimants established damages in excess of one million dollars, which is far in excess of the statutory maximum.

In addition, the Commission **FINDS** that any negligence that could possibly be attributed to Taylor Bradford for carrying around a large amount of cash would be small, and would not have diminished his recovery of the statutory maximum.

However, after conducting the analysis using those factors set out in *McClung* and the cases which have followed it, and those principles which we are required to apply by **Tenn. Code Ann.** § 9-8-307(2), the Commission **FINDS** that in this instance the State was not negligent under **Tenn. Code Ann.** § 9-8-307(C).

According, this matter must be **DISMISSED**.

IT IS SO ORDERED.



NANCY C. MILLER-HERRON,
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Mr. R.A. Stewart, Esq.
Mr. Jamal Boykin, Esq.
Stewart, Johnson, Conner & Manson
1223 5th Ave. North
Nashville, TN 37208

Ms. Stephanie Bergmeyer, Esq.
Ms. Heather Ross, Esq.
Office of the Attorney General
Civil Rights & Claims Division
P.O. Box 20207
Nashville, TN 37202-0207

on this the 13th day of May, 2014.



PAULA SWANSON, CLERK