

STATE OF MICHIGAN
COURT OF APPEALS

ZAID R. BOYKIN,

Plaintiff-Appellant,

v

NORTHLAND ROLLERSKATING, HERMAN
DAVIS, and MARVIN DAVIS,

Defendants-Appellees,

and

SAMUEL PROTECTION AGENCY and
CREG ROBINE JOHNSON,

Defendants.

UNPUBLISHED

March 2, 1999

No. 179916

Wayne Circuit Court

LC No. 93-329525 NO

ON REMAND

Before: Cavanagh, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

This case is before us for the second time. Previously, we affirmed the trial court's grant of defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). *Boykin v Northland Rollerskating Center*, unpublished order of the Court of Appeals, issued February 21, 1996 (Docket No. 179916). The Supreme Court remanded the case for reconsideration in light of *Mason v Royal Dequindre, Inc.*, 455 Mich 391; 566 NW2d 199 (1997). We again affirm.

In *Mason*, the Supreme Court held that merchants can be liable in tort for failing to take reasonable measures to protect their invitees from harm caused by the criminal acts of third parties. The harm must be foreseeable to an identifiable invitee and preventable by the exercise of reasonable care. *Id.* at 393.

Under the facts of the present case, we conclude that the trial court did not err in granting defendant's motion for summary disposition. Plaintiff alleges that after leaving the rollerskating rink, he stopped in the parking lot to watch a fight between Lester Bridgeforth and Creg Johnson. Defendants'

security guards were also watching the fight. After someone shouted that Johnson had a gun, the crowd watching the fight hastily dispersed. Plaintiff reached his car and had managed to enter it when Johnson approached and, without apparent provocation, shot him twice in the chest. Under *Mason*, absent reason to believe that plaintiff or the other spectators were in obvious and imminent danger, defendants had no duty to protect plaintiff from Johnson's criminal acts. See *id.* at 403-404; *Krass v Joliet, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 204413, issued 2/2/99). Because it was not foreseeable that Johnson would attack plaintiff, summary disposition was appropriate.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Richard Allen Griffin