

CS109B Reading Assignment

In your first year of law school, you might read hundreds of cases like *Katko v. Briney*, below — a 1971 dispute where Iowa resident Marvin Katko sued Edward and Bertha Briney after he broke into an empty home they owned in order to steal items inside, and was shot by a “shotgun trap” they had hidden behind a bedroom door. This case, like millions of others, is part of the precedential caselaw governing each person in the United States.

After reading a case as a law student, you might be called upon by a law professor (without warning!) to answer a series of questions:

- What were the **facts** of the case? What did the evidence show?
- What was the **procedural history**? How did the case arrive at the point where the Supreme Court of Iowa could rule on it?
- What were the **issues** in the case? What did the court have to decide?
- What were the **arguments** of the parties (the plaintiff and defendant) about each issue? What did each side say?
- What was the **holding** of the court?
- What was the **rationale** of the court? What authorities or precedents did it rely on, and how did it apply those precedents to the current dispute?
- If there was a **dissent**, how did the dissenting judge disagree with the majority decision?

For class on Monday, please read *Katko v. Briney* and be prepared to answer those questions. You might want to highlight, in different colors, sections of the case that show the **facts**, **procedural history**, **arguments**, **holding**, and **rationale**. And in the back of your mind, you might consider whether this is a task a computer could do for you.

183 N.W.2d 657 (1971)
Marvin KATKO, Appellee,

v.

Edward BRINEY and Bertha L. Briney, Appellants.

No. 54169.

Supreme Court of Iowa.

February 9, 1971.

Bruce Palmer and H. S. Life, Oskaloosa, for appellants.

Garold Heslinga, Oskaloosa, for appellee.

MOORE, Chief Justice.

The primary issue presented here is whether an owner may protect personal property in an unoccupied boarded-up farm house against trespassers and thieves by a spring gun capable of inflicting death or serious injury.

We are not here concerned with a man's right to protect his home and members of his family. Defendants' home was several miles from the scene of the incident to which we refer infra.

*658 Plaintiff's action is for damages resulting from serious injury caused by a shot from a 20-gauge spring shotgun set by defendants in a bedroom of an old farm house which had been uninhabited for several years. Plaintiff and his companion, Marvin McDonough, had broken and entered the house to find and steal old bottles and dated fruit jars which they considered antiques.

At defendants' request plaintiff's action was tried to a jury consisting of residents of the community where defendants' property was located. The jury returned a verdict for plaintiff and against defendants for \$20,000 actual and \$10,000 punitive damages.

After careful consideration of defendants' motions for judgment notwithstanding the verdict and for new trial, the experienced and capable trial judge overruled them and entered judgment on the verdict. Thus we have this appeal by defendants.

I. In this action our review of the record as made by the parties in the lower court is for the correction of errors at law. We do not review actions at law de novo. Rule 334, Rules of Civil Procedure. Findings of fact by the jury are binding upon this court if supported by substantial evidence. Rule 344(f), par. 1, R.C.P.

II. Most of the facts are not disputed. In 1957 defendant Bertha L. Briney inherited her parents' farm land in Mahaska and Monroe Counties. Included was an 80-acre tract in southwest Mahaska County where her grandparents and parents had lived. No one occupied the house thereafter. Her husband, Edward, attempted to care for the land. He kept no farm machinery thereon. The outbuildings became dilapidated.

For about 10 years, 1957 to 1967, there occurred a series of trespassing and housebreaking events with loss of some household items, the breaking of windows and "messing up of the property in general". The latest occurred June 8, 1967, prior to the event on July 16, 1967 herein involved.

Defendants through the years boarded up the windows and doors in an attempt to stop the intrusions. They had posted "no trespass" signs on the land several years before 1967. The nearest one was 35 feet from the house. On June 11, 1967 defendants set "a shotgun trap" in the north bedroom. After Mr. Briney cleaned and oiled his 20-gauge shotgun, the power of which he was well aware, defendants took it to the old house where they secured it to an iron bed with the barrel pointed at the bedroom door. It was rigged with wire from the doorknob to the gun's trigger so it would fire when the door was opened. Briney first pointed the gun so an intruder would be hit in the stomach but at Mrs Briney's suggestion it was lowered to hit the legs. He admitted he did so "because I was mad and tired of being tormented" but "he did not intend to injure anyone". He gave no explanation of why he used a loaded shell and set it to hit a person already in the house. Tin was

nailed over the bedroom window. The spring gun could not be seen from the outside. No warning of its presence was posted.

Plaintiff lived with his wife and worked regularly as a gasoline station attendant in Eddyville, seven miles from the old house. He had observed it for several years while hunting in the area and considered it as being abandoned. He knew it had long been uninhabited. In 1967 the area around the house was covered with high weeds. Prior to July 16, 1967 plaintiff and McDonough had been to the premises and found several old bottles and fruit jars which they took and added to their collection of antiques. On the latter date about 9:30 p. m. they made a second trip to the Briney property. They entered the old house by removing a board from a porch window which was without glass. While McDonough was looking around the kitchen area plaintiff went to another part of the house. As he started to open the north bedroom door the shotgun went off striking him in the right leg above the ankle bone. Much of his leg, including part of the tibia, was blown away. Only by McDonough's assistance was plaintiff able to get out of the house and after crawling some distance was put in his vehicle and rushed to a doctor and then to a hospital. He remained in the hospital 40 days.

[...]

III. Plaintiff testified he knew he had no right to break and enter the house with intent to steal bottles and fruit jars therefrom. [...]

IV. The main thrust of defendants' defense in the trial court and on this appeal is that "the law permits use of a spring gun in a dwelling or warehouse for the purpose of preventing the unlawful entry of a burglar or thief". They repeated this contention in their exceptions to the trial court's instructions 2, 5 and 6. They took no exception to the trial court's statement of the issues or to other instructions.

In the statement of issues the trial court stated plaintiff and his companion committed a felony when they broke and entered defendants' house. In instruction 2 the court referred to the early case history of the use of spring guns and stated under the law their use was prohibited except to prevent the commission of felonies

of violence and where human life is in danger. The instruction included a statement breaking and entering is not a felony of violence.

Instruction 5 stated: “You are hereby instructed that one may use reasonable force in the protection of his property, but such right is subject to the qualification that one may not use such means of force as will take human life or inflict great bodily injury. Such is the rule even though the injured party is a trespasser and is in violation of the law himself.”

Instruction 6 stated: “An owner of premises is prohibited from willfully or intentionally injuring a trespasser by means of force that either takes life or inflicts great bodily injury; and therefore a person owning a premise is prohibited from setting out ‘spring guns’ and like dangerous devices which will likely take life or inflict great bodily injury, for the purpose of harming trespassers. The fact that the trespasser may be acting in violation of the law does not change the rule. The only time when such conduct of setting a ‘spring gun’ or a like dangerous device is justified would be when the trespasser was committing a felony of violence or a felony punishable by death, or where the trespasser was endangering human life by his act.”

[...]

The overwhelming weight of authority, both textbook and case law, supports the trial court’s statement of the applicable principles of law.

Prosser on Torts, Third Edition, pages 116-118, states:

“* * * the law has always placed a higher value upon human safety than upon mere rights in property, it is the accepted rule that there is no privilege to use any force calculated to cause death or serious bodily injury to repel the threat to land or chattels, unless there is also such a threat to the defendant’s personal safety as to justify a self-defense. * * * spring guns and other mankilling devices are not justifiable against a mere trespasser, or even a petty thief. They are privileged only against those upon whom the landowner, if he were present in person would be free to inflict injury of the same kind.”

[...]

Similar statements are found in 38 Am. Jur., Negligence, section 114, pages 776, 777, and 65 C.J.S. Negligence § 62(23), pages 678, 679; Anno. 44 A.L.R. 2d 383, entitled “Trap to protect property”.

In *Hooker v. Miller*, 37 Iowa 613, we held defendant vineyard owner liable for damages resulting from a spring gun shot although plaintiff was a trespasser and there to steal grapes. At pages 614, 615, this statement is made: “This court has held that a mere trespass against property other than a dwelling is not a sufficient justification to authorize the use of a deadly *661 weapon by the owner in its defense; and that if death results in such a case it will be murder, though the killing be actually necessary to prevent the trespass. *The State v. Vance*, 17 Iowa 138.” At page 617 this court said: “[T]respassers and other inconsiderable violators of the law are not to be visited by barbarous punishments or prevented by inhuman inflictions of bodily injuries.”

The facts in *Allison v. Fiscus*, 156 Ohio 120, 100 N.E.2d 237, 44 A.L.R. 2d 369, decided in 1951, are very similar to the case at bar. There plaintiff’s right to damages was recognized for injuries received when he feloniously broke a door latch and started to enter defendant’s warehouse with intent to steal. As he entered a trap of two sticks of dynamite buried under the doorway by defendant owner was set off and plaintiff seriously injured. The court held the question whether a particular trap was justified as a use of reasonable and necessary force against a trespasser engaged in the commission of a felony should have been submitted to the jury. The Ohio Supreme Court recognized plaintiff’s right to recover punitive or exemplary damages in addition to compensatory damages.

[...]

In addition to civil liability many jurisdictions hold a land owner criminally liable for serious injuries or homicide caused by spring guns or other set devices. *See State v. Childers*, 133 Ohio 508, 14 N.E.2d 767 (melon thief shot by spring gun); *Pierce v. Commonwealth*, 135 Va. 635, 115 S.E. 686 (policeman killed by spring gun when he opened unlocked front door of defendant’s shoe repair shop); [...].

*662 The legal principles stated by the trial court in instructions 2, 5 and 6 are well established and supported by the authorities cited and quoted supra. There is no merit in defendants' objections and exceptions thereto. Defendants' various motions based on the same reasons stated in exceptions to instructions were properly overruled.

[...]

Affirmed.

All Justices concur except LARSON, J., who dissents.

LARSON, Justice.

I respectfully dissent, first, because the majority wrongfully assumes that by installing a spring gun in the bedroom of their unoccupied house the defendants intended to shoot any intruder who attempted to enter the room. Under the record presented here, that was a fact question. Unless it is held that these property owners are liable for any injury to a intruder from such a device regardless of the intent with which it is installed, liability under these pleadings must rest upon two definite issues of fact, i.e., did the defendants intend to shoot the invader, and if so, did they employ unnecessary and unreasonable force against him?

It is my feeling that the majority oversimplifies the impact of this case on the law, not only in this but other jurisdictions, *663 and that it has not thought through all the ramifications of this holding.

There being no statutory provisions governing the right of an owner to defend his property by the use of a spring gun or other like device, or of a criminal invader to recover punitive damages when injured by such an instrumentality while breaking into the building of another, our interest and attention are directed to what should be the court determination of public policy in these matters. On both issues we are faced with a case of first impression. We should accept the task and clearly establish the law in this jurisdiction hereafter. I would hold there is no absolute liability for injury to a criminal intruder by setting up such a device on his property, and unless done with an intent to kill or seriously injure the intruder, I would absolve the owner from liability other than for negligence. [...]

Although the court told the jury the plaintiff had the burden to prove 'That the force used by defendants was in excess of that force reasonably necessary and which persons are entitled to use in the protection of their property', it utterly failed to tell the jury it could find the installation was not made with the intent or purpose of striking or injuring the plaintiff. There was considerable evidence to that effect. As I shall point out, both defendants stated the installation was made for the purpose of scaring or frightening away any intruder, not to seriously injure him. It may be that the evidence would support a finding of an intent to injure the intruder, but obviously that important issue was never adequately or clearly submitted to the jury.

Unless, then, we hold for the first time that liability for death or injury in such cases is absolute, the matter should be remanded for a jury determination of defendant's intent in installing the device under instructions usually given to a jury on the issue of intent.

[...]

I do not wish to criticize, but believe the factual statement of the majority fails to give a true perspective of the relative facts and issues to be considered.

[...]

At the trial of this case Mr. Briney, one of the defendants, testified that the house where plaintiff was injured had been the home of Mrs. Briney's parents. He said the furniture and other possessions left there were of considerable value and they had tried to preserve them and enjoy them for frequent visits by Mrs. Briney. It appeared this unoccupied house had been broken into repeatedly during the past ten years and, as a result, Mr. Briney said "things were pretty well torn up, a lot of things taken." To prevent these intrusions the Brineys nailed the doors and some windows shut and boarded up others. Prior to this time Mr. Briney testified he had locked the doors, posted seven no trespassing signs on the premises, and complained to the sheriffs of two counties on numerous occasions. Mr. Briney further testified that when all these efforts were futile and the vandalism continued, he placed a 20-gauge shotgun in a bedroom and wired it so that it would

shoot downward and toward the door if anyone opened it. He said he first aimed it straight at the door but later, at his wife's suggestion, reconsidered the aim and pointed the gun down in a way he thought would only scare *665 someone if it were discharged. On cross-examination he admitted that he did not want anyone to know it was there in order to preserve the element of surprise.

Plaintiff testified he knew the house was unoccupied and admitted breaking into it in the nighttime without lawful reason or excuse. He claimed he and his companion were seeking old bottles and dated fruit jars. He also admitted breaking in on one prior occasion and stated the reason for the return visit was that "we decided we would go out to this place again and see if there was something we missed while we was out there the first time." An old organ fascinated plaintiff. Arriving this second time, they found that the window by which they had entered before was now a "solid mass of boards" and walked around the house until they found the porch window which offered less resistance. Plaintiff said they crawled through this window. While searching the house he came to the bedroom door and pulled it open, thus triggering the gun that delivered a charge which struck him in the leg.

[...]

Although I am aware of the often-repeated statement that personal rights are more important than property rights, where the owner has stored his valuables representing his life's accumulations, his livelihood business, his tools and implements, and his treasured antiques as appears in the case at bar, and where the evidence is sufficient to sustain a finding that the installation was intended only as a warning to ward off thieves and criminals, I can see no compelling reason why the use of such a device alone would create liability as a matter of law.

[...]

[F]or cases considering the devices a property owner is privileged to use to repel an invader where there is no threat to human life or safety, see *Allison v. Fiscus*, 156 Ohio St. 120, 100 N.E.2d 237, 44 A.L.R. 2d 369; *State v. Barr*, 11 Wash.

481, 39 P. 1080 (1895); *State v. Childers*, supra; *Weis v. Allen*, supra; *Pierce v. Commonwealth*, supra; *Johnson v. Patterson*, supra; *Marquis v. Benfer*, supra.

In *Allison v. Fiscus*, supra, at page 241 of 100 N.E.2d, it is said: “Assuredly, * * the court had no right to hold as a matter of law that defendant was liable to plaintiff, as the defendant’s good faith in using the force which he did to protect his building and the good faith of his belief as to the nature of the force he was using were questions for the jury to determine under proper instructions.” (Emphasis supplied.)

[...]

Like the Ohio Supreme Court in *Allison v. Fiscus*, supra, I believe that the basis of liability, if any, in such a case should be either the intentional, reckless, or grossly negligent conduct of the owner in setting the device.

If this is not a desirable expression of policy in this jurisdiction, I suggest the body selected and best fitted to establish a different public policy would be the State Legislature.

[...]