Dreadful things happen when vendors sell alcohol to minors.

Investigation results in $2 million settlement in Dram Shop case.

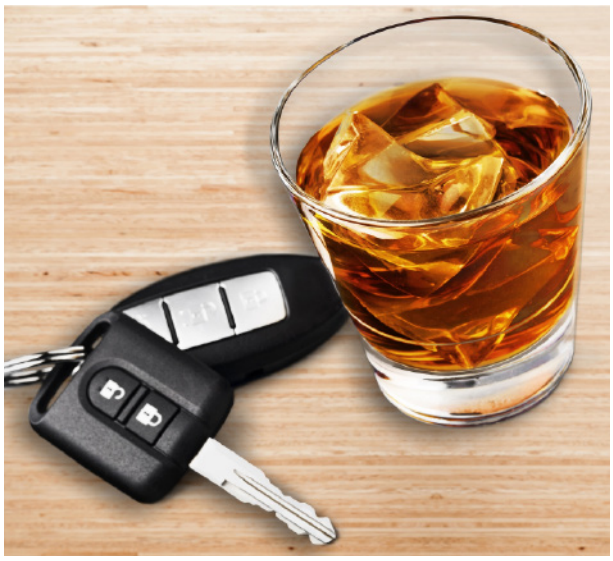
John Smith (not his real name) was driving home from work across the scenic John Gorrie Bridge (Hwy. 98) in Apalachicola, Florida, when a pick-up truck suddenly crossed the center line and crashed head-on into John's van. The impact of the crash was devastating. John's vehicle spun around and flipped over onto the passenger side. Worried the vehicle would erupt into flames at any second, several Good Samaritans helped extract John from his mangled vehicle. He was severely injured.

When law enforcement officers arrived, they found that the teenage driver of the pick-up truck smelled of alcohol and was slurring his words. He was transported to a hospital where his blood alcohol level revealed that he was severely intoxicated – two and one-half times the legal limit. The teenage driver was charged as a minor driving under the influence of alcohol and causing great bodily harm.

In the days following the crash, John underwent multiple surgeries to repair the complex fractures of his pelvis, knee, and jaw sustained in the accident. After several complications, John was transferred from the hospital to an inpatient facility where he began rehabilitation.

In response to the charges brought against the teenage driver, the driver's automobile insurance carrier offered John the minimal liability coverage policy limits of $50,000. At this point, John was devastated by his injuries, unsure of his legal options, unable to return to work, and facing mounting medical bills already exceeding $200,000. His family reached out for advice and was referred to Searcy Denney attorneys **Chris Searcy** and **Cameron Kennedy**.

Unfortunately, cases such as these were not new to the attorneys. They were fully aware that dreadful things happen when vendors sell alcohol to minors. Cameron Kennedy immediately investigated the circumstances of how the teenage driver had obtained the alcohol. The investigation took time and persistence and ultimately confirmed the teenager had purchased the alcohol from a liquor store without being carded for age in violation of Florida law. This law makes it a crime to sell alcohol to a person under 21 years of age. The law specifically allows civil tort actions against vendors who willfully and unlawfully sell alcoholic beverages to minors who then become intoxicated and injure others. The civil liability is established under Florida's Dram Shop Act, § 768.125, Fla. Stat.



Having handled similar cases, Mr. Kennedy began building John's case. As the evidence became clear, he filed claims against the liquor store and secured a $2 million policy-limits settlement for John. The settlement provided John and his family with financial security in the wake of his devastating injuries, medical bills, and lost income.

A similar view from not too far away: Justices from the Florida Supreme Court have agreed to take up a case involving catastrophic injuries to Jacquelyn Faircloth after the First District Court of Appeals, in a 2-1 decision, rejected a $28 million judgment in favor of Jacquelyn Faircloth stemming from a Dram Shop case against Potbelly's, a local Tallahassee bar with a documented history of serving alcohol to underage university students.

This very important case, *Main Street Entertainment, Inc. v. Faircloth*, 342 So.3d 232, (Fla. 1st DCA., 2022), has drawn considerable public attention, including many newspaper articles and op-eds expressing criticism of the majority opinion handed down by the First District's panel of judges. Criticisms pointed out that the decision overturning the verdict is unworkable under Florida law. Detractors of the ruling included Florida State University and University of Florida, both of whom hired appellate attorneys and submitted notice that they will file a brief in support of Faircloth at the state Supreme Court.

Jacquelyn Faircloth's life and vibrant future was destroyed on November 29, 2014, when she was an 18-year-old senior high school student visiting her brother, a freshman student at FSU. During her visit, Jacquelyn was struck by an underage drunk driver who worked at Potbelly's. He had been served alcohol by his employer that night which had resulted in severe intoxication. Jacquelyn suffered profound brain damage. She no longer can walk or talk and requires tubes

to breathe and eat. Jacquelyn's attorneys sued Potbelly's for knowingly, willfully, and unlawfully serving alcohol to its minor employee. The case was tried in Tallahassee. A verdict was reached in favor of Jacquelyn and against Potbelly's. On appeal, the judgment was overturned when two out of the three judges on the panel agreed with Potbelly's defense. Their ruling determined that the case involved claims of negligence, not intentional tort, and Potbelly's was entitled to argue principles of comparative fault to reduce its liability.

Now, almost eight years after suffering her injuries, Jacquelyn's case will be reviewed by the Florida Supreme Court to decide her case on a certified question of great public importance. The Court's decision will determine whether intentional persons found responsible for injury to other persons are permitted to shrink their legal responsibility for the life-altering consequences of their intentional misjudgments. In other words, the Court will determine whether negligent acts can be compared with intentional ones. Logically, such side-by-side comparisons are not permitted because of inherently dissimilar and incomparable species of conduct. For example, a man who negligently trips over a dog cannot be compared to a man who willfully kicks the dog. Even the dog knowns the difference! Notwithstanding this rather simple concept, Florida's long-standing jurisprudence prohibits intentional tortfeasors from reducing their liability by comparative negligence. Those who commit willful, unlawful, or purposeful wrongs, causing harm to others, cannot reduce their fault by comparing their actions to ordinary negligence.

Fortunately, the Florida Supreme Court will not have to wrestle with authoring a well-reasoned judicial opinion. That work has already been completed by Judge Scott Makar, the third judge of the three-judge panel who authored a dissenting opinion in the case. Judge Makar's dissent is one of the finest examples of a well-reasoned and thoughtful dissenting opinion issued by the First District Court of Appeals. By adopting Judge Makar's dissent, the Florida Supreme Court will fulfill its obligation to answer this question and demonstrate that even though the arc of the moral universe is long, it does bend towards justice. ◆

Read the majority opinion here, along with Judge Makar's well-reasoned dissent:

https://law.justia.com/cases/florida/first-district-court-of-appeal/2022/19-4058.html