No. 29564 -- Antonio Feliciano v. 7-Eleven, Inc., a corporation

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Maynard, Justice, dissenting:

I do not believe that the right of self-defense should constitute a substantial public policy exception to the employment at will doctrine so as to sustain a cause of action for wrongful discharge.

The basic rule that an employer has an absolute right to discharge an at-will employee has been subjected to several exceptions by this Court, one of which is that where an employer's motivation for the discharge is to contravene a substantial public policy, then the employer may be liable to the employee for damages. A review of these exceptions indicates that generally they were created to protect the public from threats to its health, financial well-being, or constitutional rights, or to guarantee the effective operation of the legal system. The rationale underlying each exception is that protecting the employee from discharge is necessary to uphold a substantial public interest. I fear that the new exception to the employment at will doctrine will have the opposite effect and actually result in an increased risk of harm to the public.

The 7-Eleven Corporation prohibits employees from subduing or otherwise interfering with a store robbery out of recognition of the fact that employees who interfere with robbers are not only much

more likely to suffer injuries to themselves but also to cause harm to innocent bystanders such as customers. By discouraging store policies like the one at issue here, I believe that the majority unintentionally encourages irresponsible and even dangerous conduct among employees which will result in increased numbers of injuries.

This in turn will cause more lawsuits against 7-Eleven by both employees and customers who are injured when employee attempts to stop robberies erupt into violence. In *Blake v. John Skidmore Truck Stop, Inc.*, 201 W.Va. 126, 493 S.E.2d 887 (1997), to which I dissented, this Court ruled that an employee of a truck stop who sustained injuries at work as the result of criminal acts of a third party could bring a deliberate intention cause of action against her employer. As evidence of deliberate intention, the Court pointed to the testimony of plaintiff's expert who opined that the store where the plaintiff worked constituted a specific unsafe working condition *because it did not have adequate security safeguards.* In the case at hand, the majority opinion actually renders unenforceable one of 7-Eleven's safeguards to protect workers in case of robbery. Nevertheless, the absence of this policy would probably cause this Court to uphold a deliberate intention action against 7-Eleven arising from an injury to an employee caused when he or she attempted to subdue a robber.

Moreover, the new substantial public policy exception to the employment at will doctrine renders no-fighting policies unenforceable as well. Now every time an employee is discharged for fighting, he or she will sue his or her employer and claim self-defense. The majority opinion will have the unfortunate result of taking disciplinary decisions out of the hands of private employers and placing these

decisions in the courts.

Finally, the majority's new exception to the employment at will doctrine simply is not necessary. It cannot honestly be believed that in those rare instances when an employee is faced with the imminent threat of serious physical harm or death, that he or she would forego defending himself or herself for fear of losing a job as a result.

It is clear to me that recognizing self-defense as a substantial public policy exception to the employment at will doctrine is not only unnecessary but will do more harm than good. It is likely to increase the chance of physical altercations between employees and robbers, which, in turn, will result in injuries to employees and customers, and more lawsuits against 7-Eleven and similar businesses. For these reasons, I dissent.