

MARCH 25, 2019

DAILY REPORT

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Fulton Jury Awards \$43M to Man Shot, Robbed in CVS Parking Lot

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A FULTON COUNTY jury delivered a post-apportioned award of almost \$43 million to a man shot in a CVS parking lot where he had arranged to buy an iPad from another person a few days before Christmas in 2012.

James Carmichael, now 54, was shot several times and underwent a half-dozen surgeries at the Moreland Avenue pharmacy in southeast Atlanta where, his lawyers said, store workers had repeatedly expressed fears for their safety, and where an employee robbed at gunpoint just three weeks prior to the Dec. 20, 2012, shooting.

“The employees had been asking for security for some time, and there was testimony that they’d had security for two or three years then dropped it,” said Law & Moran partner Pete Law.

“They never really said why they dropped it,” said Law, who represents Carmichael with firm associate Brian Kaplan, and Jimmy Rice and Andrew Brandt of James A. Rice Jr. P.C.

The lawyers said that, because CVS rejected a \$3 million settlement offer last year, they will ask the court to award attorney fees under Georgia’s offer of judgment statute. A party that declines a settlement offer under that statute and then loses at trial by at least 25 percent more than the rejected offer may have to pay the winning party’s attorney fees from the date of the rejected offer.



(Courtesy photo)

Plaintiffs attorney Brian Kaplan (from left) represented James Carmichael with Pete Law, Jim Rice and Andrew Brandt in the suit over the 2012 shooting in southeast Atlanta.

“We will be seeking all of our fees from the judgment,” said Rice. “That should result in a total recovery exceeding \$60 million.”

CVS is represented by Brian D. Trulock and Carrie Moss of Bendin Sumrall & Ladner. A CVS spokesman declined to comment.

According to the lawyers and court filings, Carmichael traveled to Atlanta from Alabama to buy and sell refurbished electronics and was wrapping up his trip when he got a call from Frankie Gray to meet in the CVS parking lot on Moreland near the intersection with Custer Avenue to discuss the sale of an iPad.

Gray got into the Carmichael’s car but they were unable to agree on a price, and Gray got out.

An unknown male then jumped in the car and demanded Carmichael's money and electronics.

Carmichael was able to grab his own gun and get off two shots before it jammed. The other man shot back several times, striking Carmichael in the arm and stomach, before running away. He was never caught.

Gray was initially arrested but later released without charge, Law said.

Carmichael ran up more than \$725,000 in medical

CVS argued in

its pleadings that Carmichael was not an invitee of CVS, and that neither he, Gray nor the unknown assailant had any business on CVS' property. The defense successfully argued to have all three added to the verdict form for the purposes of apportioning fault.

bills for multiple surgeries, and is still "not in the best shape," said Law. "He's walking, but he can't use his left arm well, and has a lot of scar tissue. Psychologically, he hasn't done as well as we would hope."

Carmichael sued Georgia CVS Pharmacy LLC in Fulton County State Court.

A mediation before M. Gino Brogdon Sr. with Henning Mediation and Arbitration Service failed to go anywhere, Law said.

"I don't remember any significant offers coming out of it," he said. "They made an offer of judgment of \$250,000, and we made one for \$3 million. We knew they weren't going to pay it, they had already told us they weren't."

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Carmichael's proposed pretrial order said CVS workers "feared for their safety in the dark parking lot littered with drug dealers and loiterers," and that the holdup a few weeks before Carmichael was shot was just one of several frightening incidents.

A customer had been struck in the head and had her purse snatched about six months earlier, the order said, and another CVS employee was also robbed at gunpoint.

"Multiple employees made multiple requests," according to the order. "CVS rejected each request, and repeatedly told the employees that security 'wasn't in the budget.'"

During a four-day trial before Judge Fred Eady, Law said his team called nearly every CVS employee at the store to testify, along with the district manager and regional asset protection manager.

"Most of the store-level employees testified that they'd had safety concerns beforehand," he said.

In closing, Law said he asked the jury to award more than \$57 million in damages.

Evidence wrapped up Thursday afternoon, and Law said the panel deliberated about six or seven hours over the course of two days before returning a verdict of \$45 million in damages, with 5 percent of the fault allocated to Carmichael for a total award of \$42,750,000.

In conversation with jurors afterwards, the lawyers said the panel didn't find CVS' claims that it was unaware of the security risks believable.

The asset protection manager "basically admitted that if the district manager had requested security it would have been his job to implement it," said Rice. "He was impeached several times, the jury didn't find his testimony credible."

Rice said the jury was also swayed by testimony from Carmichael's ex-wife and daughter about the difficulties he's had adjusting to living with his injuries.

"They said they liked them a lot," Rice said. 