

- 1 Landowner Liability for Criminal Acts

- 2 Criminal Assaults in Public Park and Recreation Facilities

- 3 Landowner Liability
Foreseeability

- 4 General Police Protection
Notice of Similar Criminal Acts?

- 5 Ameijeras v.
Metropolitan Dade County
534 So.2d 812
(Fla.App. 1988)

- 6 Plaintiff shot in robbery attempt
jogging along nature trail in Metro-Dade park; paraplegic

- 7 plaintiff alleged County had facilitated attack

by permitting trail to become overgrown

- 8 Specifically, "homosexual activity, illicit drug dealing and arson
attempts had occurred in the park

- 9 and Dade County knew of these activities,

but failed to provide adequate protection

- 10 County: NO violent crimes had been reported
in Bird Drive Park
- during 2 years preceding attack
- 11 A landowner has a duty to protect an invitee on his premises
- from a criminal attack that is foreseeable
- 12 the landowner's duty arises only when he has actual or constructive
knowledge
- of SIMILAR criminal acts committed on his premises
- 13 Here, NO evidence Dade actually knew or should have known
of criminal activity in Bird Drive Park
- 14 NO violent crimes reported in park for 2 yrs preceding attack
- 15 NO evidence Dade knew of criminal activity in park
- 16 In the absence of proof that it had actual or constructive notice of
similar criminal activity in Bird Drive Park
- 17 Dade County can not be held liable for the attack on plaintiff
- because the attack was not foreseeable.
- 18 Notice of Assailant's Dangerous Propensities

Hill v.
City of North Miami Beach
613 So.2d 1356
(Fla.App. 1993)

- 19 Hill was assaulted in city park owned by defendant
- 20 summer '90, Hill worked as lifeguard at pool located in park
- 21 After work, Hill went to rec. facility on park grounds to play ping pong
- 22 Hill was struck in face by other player, Dailey,

after brushing his elbow when requesting return of paddle.
Hill's jaw broken
- 23 Hill: as owner of park City owed duty to invitees

to keep the park reasonably safe from known dangerous conditions
- in this case, Dailey
- 24 Specifically, Hill claimed "City officials were on notice Dailey was
dangerous

and failed to adequately protect the safety of people in the park
- 25 Like a private landowner, the City had a duty to protect invitees
from risks that are reasonably foreseeable

- 26 In the context of a public park, a landowner has a duty to protect an invitee on his premises
- from a criminal attack that is reasonably foreseeable.
- 27 The landowner's duty arises only when he has actual or constructive knowledge
- of similar criminal acts committed on his premises
- 28 Foreseeability may be established by proving that a proprietor had actual or constructive knowledge
- of a particular assailant's inclination toward violence
- 29 evidence 2 months previously, Dailey struck a park employee who was trying to close recreation room.
- 30 Employee called police to eject Dailey
- 31 Also, summer supervisor was warned by staff member, as well as children in the park, to stay away from Dailey
- because he caused trouble and got into fights.
- 32 Park had a procedure for temporarily or permanently suspending individuals from using the park
- 33 in cases where there was serious misbehavior, e.g. temporary suspension for bringing firearm into park

34 Facts in case distinguishable
from Ameijeras

35 present case facts were close in time to the attack on Hill

and the behavior known to the park personnel was the same general
type.

REVERSED & REMANDED

36 Random, Unforeseeable Criminal Attack?

Sutter v.
Audubon Park Commission
533 So.2d 1226
(La.App. 1988)

37 Sutter shot by unknown assailant in a restroom facility in Audubon
Park, rendered quadriplegic

38 trial court found Comm. breached duty of adequate security; judgment
entered for \$4.2 million

39 The operator of a public park does not necessarily have the same duty
with regard to third party criminal conduct

as does the proprietor of a business

40 The operator of a large open public park may owe a lesser duty to

protect against criminal activity

than would the proprietor of a business

- 41 which is conducted in a confined space and from which the proprietor derives revenue
- 42 Conversely, in an area of the park such as the zoo, a confined space to which admission is charged,
- 43 the duty of the park operator might well be analogous to that of an ordinary business proprietor
- 44 Appeals Court: no basis upon which to conclude Shelter No. 12 presented an unreasonable risk to park patrons
- 45 no significant history of violent crime in or around Shelter #12
- 46 We do not find that the mainly nighttime homosexual activity at the shelter
- made it predictable that a violent daytime assault would occur there.
- 47 evidence indicated security staff both untrained and unqualified to deal with violent crime
- 48 Risk of criminal assault not sufficient to impose a duty to employ a mounted or foot patrol,
- place a permanent guard in area

or alternatively to tear down or relocate the shelter

49 Sutter's shooting was a random, unforeseeable criminal attack which could not have been easily prevented

50 ergo, no legal duty to anticipate the attack.

Irrelevant that park security inadequate for other purposes.

51 Generally, no duty to protect others from the criminal activities of third persons

52 negligence liability may be imposed when a duty to protect others against such criminal misconduct had been assumed

53 Merely because park had a security patrol

it did not assume the duty of protecting against the type of violent restroom assault experienced by Sutter

54 No Control,
No Liability

Wolsk v.

State of Hawaii

711 P.2d 1300

(Hawaii 1986)

55 Wolsk killed, Panko injured, brutally beaten

early morning attack by unknown assailants,

56 State park had a history of violent crimes.

57 No security patrol, and notice to that effect

printed on state park camping permit

58 Wolsk & Panko did not get camping permit,

although knew one was required

59 unknown third persons who harmed plaintiffs never under State's control

60 Failure to provide police protection is NOT generally actionable

61 simply because state park may have had a tendency to attract dangerous persons

62 no reason to impose a duty on the State to warn park patrons from those dangerous persons. AFFIRMED.

63 Failure to Provide Police Protection

Casey v.

Geiger

499 A.2d 606

(Pa.Super. 1985)

- 64 Casey, age 10, raped in public park owned and operated by Borough of Camp Hill
- 65 assaulted 6/19/79 10:45 a.m.,
walking through park after swimming lessons
- 66 Casey: as invitee to park,
Borough owed duty of reasonable care
for her protection
- 67 because she was minor,
a duty of greater care
than that owed adult invitee
- 68 Casey alleged negligent failure to provide: adequate protection in the
form of police or security personnel to protect invitees
against criminal acts of third persons
- 69 permitting growth of underbrush in park facilitated criminal acts
- 70 Casey: Borough knew of should have known that the type of criminal
act committed was likely
- 71 because a rape of a young girl had occurred in the park only months
before the attack on Casey

- 72 To render one liable for the deliberate criminal acts of unknown third persons
- 73 can only be a judicial rule for given limited circumstances
- 74 The criminal can be expected anywhere, any time,
and has been a risk of life for a long time.
- 75 Here, appeals court found no duty existed
to protect Casey from the intentional criminal acts of a third person
- 76 Casey attacks governmental discretion
to allocate police and other security resources,
rather than articulating any specific duty
- 77 The duty to provide police protection is a public one
- 78 which may not be claimed by an individual
unless a special relationship exists between the city and the individual
- 79 A special relationship is generally found to exist only in cases in which
an individual is exposed to a special danger

80 and the authorities have undertaken the responsibility to provide adequate protection for him.

81 The required special relationship

could not be based solely upon Casey's status as an invitee on public property

82 Further, a special relationship would not arise

simply because the Borough may have been aware of a particularly dangerous area and did nothing to prevent Casey's being assaulted

83 If the standard of supervision and care necessary to protect invitees against criminal acts were implemented

84 it is questionable how long any municipality could maintain its parks, playgrounds, and swimming pools.

85 Due to the cost of increased insurance premiums and added police protection

municipalities will lack the necessary funds to provide recreational services

86 While we sympathize with Casey , who was subjected to a horrible experience,

we must refrain from judicial innovation

87 which would allocate the limited resources of municipalities in a manner

contrary to the public duty rule.

88 SHOOTING AFTER CHEERLEADING EVENT

BAILEY v.
DISTRICT OF COLUMBIA

89 altercation broke out among some people in the crowd whom she did not know.

Gunfire erupted and Bailey was struck in the leg by a ricocheting bullet.

90 alleged "negligence and breach of duty by the District

for failing to provide sufficient security personnel at the cheerleading competition."

91 reasonably should have known of the high frequency of violence,

and the reputation for violence at Evans Junior High School and on the school grounds."

92 "the assault on Bailey was the first violent crime to have occurred at a Department cheerleading competition

or at any Department event held at Evans."

- 93 "Department officials responsible for security notified the police department of the event

and requested assistance with crowd control."
- 94 allegations of landowner liability for the criminal acts of unknown third parties on the premises at the time of the shooting.
- 95 "there was insufficient record evidence to establish that the criminal act in this case was reasonably foreseeable"
- 96 whether the District had a duty to guard against a reasonably foreseeable risk
- 97 that a person attending the competition would decide to settle a dispute with another individual over an item of clothing by indiscriminately shooting at that person while in the midst of a crowd of spectators.
- 98 "the evidence must at least demonstrate that the District should have anticipated the prospect of violent criminal conduct"
- 99 Bailey had failed to offer "evidence of actual criminal activities"

or "proof of inadequate security,
- 100 that could have put the District on notice of the foreseeability

of the type of harm she suffered":
- 101 such "generic information," by itself,

does not create a duty on the part of the District to protect against the use of firearms

102 Bailey's evidence consisted "primarily of assertions that drug use, shootings, and other criminal acts

occurred in the area surrounding the school."

103 local crime rate

no means sufficient, by itself, to impose liability.

104 Bailey had failed to produce specific "evidence of any shooting incidents, assaults, or other gun-related violence

105 at any Department cheerleading competition or any other Department event held at Evans Junior High School"

106 SWEET 16 PARTY AT REC. CENTER ENDS IN FATAL PARKING LOT SHOOT OUT

Henry v. Parish of Jefferson

(La.App. 5 Cir, 12/30/02)

107 Municipalities must exercise reasonable care under the circumstances.

108 The municipality is not the insurer of the safety of those making use of such facilities,

109 neither is it required to eliminate every source or possibility of danger.

110 The duty is not to insure against the possibility of an accident,

but to act reasonably.

111 public entities have no legal duty

to anticipate
unforeseeable criminal acts
that occur in
public places.”

112 plaintiffs claimed the shootings were foreseeable,

given “the location of the MAC in a high crime area.”

113 appeals court found the shootings were “a random, unforeseeable

114 shootings were “a
continuation of events that had occurred previously that evening,

and were wholly
unrelated to the party conducted in the upstairs room of the MAC.”

115 plaintiff’s expert admitted: “It could have happened anywhere.”

116 criminal attack which could not easily have been prevented.”

Accordingly, Jefferson
Parish “had no legal duty to anticipate such an attack.”

117 appeals court
found jury had not erred in concluding “Jefferson Parish was not at fault
or negligent

118 SHOOTING AT PRIVATE DANCE ON PARK DISTRICT PREMISES

WILBERT v.

METROPOLITAN PARK DISTRICT OF TACOMA

119 Ghetto Down Productions private dance to raise money for charity.

wedding reception occupied the second room available at the facility.

120 As soon as fight began,
called 911
and requested police assistance.

121 trial court granted Metro's motion for summary judgment,

122 "Metro owed no legal duty to protect Wilbert from the criminal activities
of third parties."

123 landowner liability for criminal activity by third parties

generally limited to situations where the criminal misconduct was
reasonably foreseeable.

124 whether the actual harm fell within a general field of danger

which should have been anticipated.

125 cases analyzing foreseeability

have focused upon the history of violence known to the defendant.

126 Where no evidence is presented that the defendant knew of the dangerous propensities of the individual responsible for the crime,
127 and there is no history of such crimes occurring on the premises,
128 the courts have held the criminal conduct unforeseeable

129 where there is a history of similar violence on the premises

or the defendant knew of the dangerous propensities of the individual responsible,

130 foreseeability has been established,

at least sufficient to create a jury question.

131 found no evidence Metro should,

on the basis of the events earlier in the evening,

have anticipated a fatal assault with a deadly weapon."

132 no evidence that Metro knew of the violent propensities of the assailant

or that there had been similarly violent episodes at the Center in the past.

133 Evidence of antisocial, unruly, or even hostile behavior

generally insufficient to establish that a defendant with a supervisory duty should reasonably have anticipated a more serious misdeed.

134 criminal event in question was not foreseeable as a matter of law.

Accordingly, the appeals court found "Metro owed Wilbert no duty of prevention."

135 SECURITY QUESTIONED IN STADIUM PARKING LOT MISHAP AT MUSIC FESTIVAL

Florman v.
City of New York
(N.Y.App.Div. 05/07/2002),

136 plaintiff was
watching a fight in a stadium park lot

when she struck and injured by a vehicle driven by an unknown person.

137 plaintiff alleged that her injuries were attributable to inadequate security

in
parking areas surrounding the stadium.

138 stadium was hosting the
"Lollapalooza Festival,"

a touring music festival that featured 1990s alternative rock bands.

139 a landlord, and, as well, a permittee with a contractual obligation to provide
security,

140 has a common-law duty to take minimal precautions to protect tenants
and
users of the facility from foreseeable harm,

141 including the criminal conduct of third parties,

142 this duty arises only when such party "knows or has reason to know

likelihood that third persons may endanger the safety of those lawfully on the premises,

143 as where the landlord [or permittee]

aware of prior criminal activity on the premises.

144 while a landowner must provide reasonable security measures,

it need not provide "optimal [or] the most advanced security system available."

145 could reasonably anticipate that, absent adequate supervision and security,

traffic accidents might occur.

146 actions were not a foreseeable consequence of alleged failure to provide adequate security.

147 someone would drive, recklessly or intentionally, at high speed in a parking field striking standers-by

not a danger normally associated with crowd control

- 148 Florman failed to offer any evidence of prior criminal activity in the parking fields at

Downing Stadium or any other evidence from which a conclusion of foreseeability could be drawn.
- 149 record shows, the City and Delsener undertook requisite security measures.
- 150 difficult to understand what measures could have been undertaken to prevent Florman's injury
- 151 except presumably to have security officer posted at precise location where incident took place or wherever pedestrians were gathered,

surely an unreasonable burden.
- 152 even assuming a lapse in the security afforded in the parking lot,
- 153 Florman's injuries are the result of the independent, intervening act of the driver of the vehicle

did not flow from any lack of security.
- 154 VILLAGE LIABILITY FOR ASSAULT AFTER ROCK CONCERT

COMASTRO v.
VILLAGE OF ROSEMONT
461 N.E.2d 616 (Ill.App. 1 Dist. 1984)

155 allegedly sustained as a result of the Village's negligent failure to use due care

in patrolling its premises and thereby prevent a criminal attack by an unknown third party."

156 Village responded

"it had no duty to protect Comastro from criminal attack."

157 general rule

person has no duty to protect someone from criminal attack by third persons.

158 special relationships which give rise to a duty to protect another from harm

business inviter-invitee

159 one may be required to protect an individual from criminal attacks by third parties

under circumstances indicating "knowledge of previous incidents

160 special circumstances that would charge the owner with knowledge of the danger and duty to anticipate it.

161 special relationship involved is the duty owed by an owner of a

business premises

- 162 Village, owner of Horizon) to a business invitee (concert attendee Comastro).
- 163 business purpose was the operation of a public arena by a municipality.
- 164 municipal corporation engaged in a non-governmental function, such as the operation of a public stadium or arena,
- 165 will be held to the same standard of care as that imposed on a private party."
- 166 duty imposed on a private party is "to exercise reasonable care under the circumstances to the extent of the undertaking."
- 167 In special relationship situations, such as the owner of a business premises to business invitees,
- 168 the nature and extent of the undertaking imposes a duty to exercise a high degree of care
- 169 responsibility to prevent injuries which could have been foreseen and avoided."
- 170 knowledge of prior criminal acts or a condition which might result in an assault
- 171 duty bound to take reasonable precautions for the safety
- 172 whether or not the Village had sufficient knowledge so that the

likelihood of danger to its patrons was reasonably foreseeable."

173 no unruly behavior had taken place in the arena, no fights had broken out, and no drinking had been observed,"

174 Village "had advance notice of potential trouble at the AC/DC rock concert."

175 Village had sufficient advance warning of potential trouble at the concert in question

to establish a duty owed to its business invitees

176 take reasonable steps and exercise the degree of care and vigilance practicable under the circumstances to prevent the injury.

177 jury (or judge in a non-jury trial)

would determine whether particular precautionary measures are reasonable under the circumstances

178 Whether actions of Village in deploying police everywhere except the parking lot after the concert constituted a breach of duty

question to be determined by the trier of fact.

179 Village also argued "it was shielded from liability for negligently failing to protect its citizens from criminal attack by the general rule of non-liability of municipalities for failure to exercise general police powers."

- 180 Village presented no arguments to establish the necessary facts that its activities at the Horizon were those of a municipality engaged in a governmental function
- 181 supplying only general police protection to preserve a community's well-being
- 182 policemen...maintaining order inside the Horizon were wearing yellow jackets instead of their official uniforms
- 183 indicating the police were providing special protection to specific members of the community.
- 184 municipal immunity for general police protection
- would not apply to special protection provided to attendees at a rock concert.
- 185 duty to protect against criminal attack will arise when the police are paid to provide a level of service greater than that afforded other village residents.
- 186 Village had provided Horizon patrons with "greater protection than that offered to the village residents at large."
- 187 Village owed Comastro a duty as a patron of the Horizon to exercise reasonable care to protect him from criminal attack."
- 188 reversed the summary judgment in favor of the Village and remanded the case to the trial court.

189 FAN ALLEGES INADEQUATE SECURITY AFTER PARKING LOT ASSAULT

NOBLE v.
LOS ANGELES DODGERS, INC.
(Cal.App. 2 Dist. 1985)

190 Noble sued Los Angeles Dodgers for negligently failing to protect them against physical assault by third parties in parking lot at Dodgers Stadium.

191 two drunks standing by the car - one was vomiting and one was urinating on the car.

192 remonstrated with the individuals, whereupon the two began to shout obscenities

193 approached one of the miscreants one of them struck him.

194 Dodgers had approximately 69 people assigned to security duties on the night in question.

195 Some of those were stationed at various points inside and some outside the stadium.

196 one security person for every 900 customers.

Some were on mobile patrol.

- 197 question to be determined by the jury in this instance was
- "what reasonable steps could have been taken to prevent Noble's injury?"
- 198 landowner is not an insurer of the safety of persons on his property
- 199 does, however, have a duty to take reasonable steps to protect invitees
- from foreseeable injury even to the extent of controlling the conduct of third parties.
- 200 sad commentary in this day and age anyone can foresee or expect a crime will be committed at any time and at any place in the more populous areas of the country.
- 201 not enough to impose liability on a property owner when a crime does in fact occur on his or her property...
- 202 expert did not indicate in his testimony how "these additional seven persons or a different deployment pattern would have prevented Noble's injury."
- 203 expert's opinion that "his method of policing the parking lot was better than the one the Dodgers used."
- 204 critique defendant's security measures and to compare them to some abstract standards espoused by a so-called 'security expert'.
- 205 ignored the "critical question" of causation.

Dodgers had provided one security person for every 900 customers at the ballgame.

206 degree of protection afforded by the Dodgers on the stadium grounds was greater than that afforded to the general citizenry of Los Angeles by the police department.

207 Noble had "offered no evidence that there was any reasonable steps

which the Dodgers could have taken to prevent the incident

208 or that inaction on the part of the Dodgers in any way caused Noble's injuries."

209 evidence that during the preceding 66 night games at Dodger Stadium,

there had been five reported fights in the parking lot.

210 to impose liability upon the Dodgers would, in the opinion of the court, be tantamount to finding the Dodgers had a duty to control the conduct of the Nobles "or to protect them against themselves."

211 appeals court, therefore, reversed the judgment of the lower court in favor of the Nobles

212 ROCK CONCERT DANCER ASSAULTED BY INTOXICATED PATRON

LEVANGIE v. DUNN

356 S.E.2d 88 (Ga. App. 1987)

213 Levangie donned wolf's head mask simulated banging his head get the crowd involved in the show.

214 during the playing of "Born to be Wild," Levangie approached from behind by Mike York, nicknamed "York the Dork,"

obviously intoxicated from guzzling "Jack Daniel's" whiskey.

215 York grabbed Levangie, supposedly to perform assisted simulated head-banging,

shook him violently, allegedly causing severe spinal injury.

216 Levangie sued Dunn owner of the sports pavilion alleging "violations of certain ordinances and statutes as to public gatherings and failure to supervise activities."

217 foreseeability key factor in determining negligence liability.

218 appeals court found nothing to indicate Dunn was aware of York's presence or condition before the accident occurred.

219 nothing in the record to indicate Dunn was aware of York's presence or condition before the accident occurred

220

221