



THE BASSETT FIRM
WWW.THEBASSETTFIRM.COM

Passion. Preparation. Persistence.

Volume 4, Issue 11

THE BASSETT BULLETIN TM

HOW DO YOU DETERMINE IF A CRIME IS FORESEEABLE?

In our last newsletter, we discussed whether a property owner or manager could be liable for the criminal acts of a third-party. According to a recent San Antonio Court of Appeals' decision ([Trammell Crow Cent. Tex., Ltd. v. Gutierrez, 2006 Tex. App. LEXIS 11037 \[Tex. App. 2006\]](#)), a property owner or manager can be liable for the criminal acts for third-party if it was foreseeable that the type of crime that occurred was predictable or foreseeable.

In this newsletter, we will discuss (1) how to gauge the foreseeability requirement and (2) if a crime is foreseeable, how do you handle it during litigation.

GAUGING FORESEEABILITY

Here are some tips and examples of whether a crime is foreseeable and how to handle it once a lawsuit is filed.

1. If there has been crime on your property or in your immediate area, notify your tenants, customers, or clients. Put up notices in public areas advising people to keep a look out. Something as simple as a warning printed off of your computer (for example, "Warning: There have been several car burglaries in this area. Please keep on the look out and report suspicious activity to the police") could help aid in your defense by showing the Court and jury that you tried to warn people. This is a relatively inexpensive security measure that can be put in public areas (i.e., doors or mailboxes).
2. Know the crime in your area. Build relationships with local law enforcement. Ask the police to run extra rounds on your property. Ask the police what type of criminal activity is in the area. What is a problem area for the police? Putting your head in the sand is never a good idea. You have to know what is going on in the area so you take proper precautions. For example, if there have been several burglaries in the area, consider adding extra lights or roaming security.

3. If you are sued, consider retaining an expert to discuss criminal activity in the area. Often times, you will find that Plaintiff's attorneys like to print off "statistics" that show a multitude of crimes in the area. They can find these statistics through the local police department or from the Internet. However, these are generally not admissible because they are hearsay and are not supported by the person who generated this information.

Accordingly, to get a true picture of criminal activity in an area – with admissible evidence – consider using an expert who can gather this information.

If you are prosecuting such a case, you can't win the case unless you show the jury that the crime was foreseeable. You need an expert to show the jury what type of crime is in the area and where those crimes took place. An expert is really your only way to get this type of information before the jury.

If you are defending a premises liability case, you will need to know what kind of evidence the Plaintiff has regarding criminal activity. Knowing that up front gives you and your client a chance to thoroughly evaluate the claim.

Also, there are situations where there have been awful crimes committed against tenants of an apartment complex by unidentified strangers. Even though the criminal act was bad, that does not necessarily mean that the property owner or manager is liable if the crime was not foreseeable. If this is a situation you are facing, a criminal act occurred but it was not foreseeable, consider filing a Motion for Summary Judgment. Even if you do not win, you are forcing the opposing side to show you some of the foreseeability evidence they have to produce at trial. Often times, this means that they may even tell you who their expert is and then you can begin running down information on the plaintiff's expert.

4. What is considered a high crime area? The whole city or town? Or, just the property? If a particular bank's ATM gets robbed, does that mean that all ATMs are high risk? The answer is no.

The criminal foreseeability is limited to the specific area. In the *Gutierrez* case, the Court said that the crime must be in the specific area. It must occur either on the property or "closely nearby." The Court does not give us a definition of "closely nearby." Therefore, your expert should focus on the surrounding area.

5. Remember, before you can be liable as the property owner, the criminal act complained of must be foreseeable. Just because there are a lot of car burglaries in the area does not mean that a kidnapping and/or rape was foreseeable

In the *Gutierrez* case, the Court held that there was no doubt that the prior crimes were "sufficiently similar" to the crime against Gutierrez. Each of the previous violent crimes involved injury to a person or the threat of injury and occurred within two years of Gutierrez' murder. Most of the crimes involved the use of a deadly weapon.

Therefore, the jury found that the managers should have seen that Gutierrez' murder was foreseeable and added extra security or taken extra precautions.

6. Are you taking an active stance against crime? Make sure you have good lighting. Consider hiring roaming security. Consider surveillance cameras for your public areas. All of these show that you are taking an active position to deter crime.

If you are concerned that there is more that you can do to limit crime, then you should consider hiring a safety/security consultant to ensure that your security system meets the industry standards.

7. Finally, make your security noticeable. The Plaintiffs' criminologist expert in the *Gutierrez* case testified that the security system in place at the Quarry Market on the night Gutierrez was murdered violated acceptable professional security standards. He explained the difference between a "deterrent" security system and an "undercover" security system. According to the expert, an "undercover" security system, such as the one utilized by Trammell Crow, served to apprehend criminals only after the crime had been committed. On the other hand, a "deterrent" security system prevented crime because security was conspicuous. **The expert said that off-duty police officers were the best type of security because they were well-trained, armed, and knew the law.**

In *Gutierrez* case, the police were not conspicuous because the officers drove the Quarry Market parking lot in their private unmarked vehicles. The Plaintiffs' expert went on to testify that while the off-duty officers may come upon some one committing a crime, their inconspicuous presence provided no deterrence, and deterrence is required in a shopping mall parking lot as large as that of the Quarry Market.

Private security in shopping malls, particularly in parking lots, should be conspicuous because it deters opportunist criminals. Shopping mall parking lots are "hot spots" that require conspicuous security because customers are distracted as they walk to their cars with packages or leave their cars, locking up on their way into stores. Therefore, make your security presence known.

You can never completely prevent litigation from happening. However, you can take the steps outlined above to keep your customers safe and to take an active step in warning people of criminal activity. Some of the steps discussed above will help to build your defense against potential litigation while at the same time reduce your risk of being found liable for the criminal acts of third parties.

Remember, an ounce of prevention is worth a pound of cure.

The Bassett Firm

*Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com*

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CANDACE M. MURPHY**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**
- **JEFF A. WELLS**



Information regarding *The Bassett Bulletin* TM is available from **Meghann Beverly** (mbeverly@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
