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## THE BASSETT BULLETIN <sup>TM</sup>

### WHY SHOULD I BE LIABLE FOR THE CRIMINAL ACTS OF A STRANGER?

The Court of Appeals in San Antonio, Texas, says that a property owner or manager can be liable for the criminal acts of a third party if it was foreseeable that the type of crime that occurred was predictable or foreseeable. If you are in a high crime area, then you need to protect yourself so that you can defend yourself in this type of litigation. This article will discuss this San Antonio Court of Appeals case, plus what you can do to help in your defense, should you face this situation.

### FACTS OF THE CASE

In [\*Trammell Crow Cent. Tex., Ltd. v. Gutierrez\*, 2006 Tex. App. LEXIS 11037 \(Tex. App. 2006\)](#), a pregnant wife sued for the shooting death of her husband that took place at a mall.

This shooting took place at The Quarry Market, which Trammell Crow Central Texas, Ltd., managed. On February 18, 2002, at approximately 12:30 a.m., Luis Gutierrez and his pregnant wife, Karol Ferman, were leaving a movie theater located in the Quarry Market, when Karol heard a gunshot. Turning toward the sound, Karol saw the shooter, dressed in black with a black hood or ski mask over his or her face. Although she did not believe the first shot hit anyone, she thought a second shot hit her husband in the shoulder. Gutierrez fell to the ground, got up, and the couple started running towards the south end of the Quarry Market.

Karol fell to the ground and crawled under a car, where she remained until the ambulance arrived. There were no other witnesses to the shooting. Gutierrez later died at the hospital from four gunshot wounds, and the San Antonio Police Department classified his death as a murder. One month after Gutierrez's death, Karol gave birth to a son, four months premature.

Maria Gutierrez (Gutierrez' mother) and Karol Ferman, individually and on behalf of her infant son, filed a lawsuit alleging Gutierrez' death was proximately caused by Trammell Crow's failure to provide adequate security. Finding Trammell Crow negligent, the trial court jury returned a verdict in favor of the Plaintiffs and Trammell Crow appealed. On appeal, Trammell Crow asserted that it owed no duty to Gutierrez because his murder was not foreseeable and, even if foreseeable, the Plaintiffs failed to show that any negligence on Trammell Crow's part proximately caused Gutierrez' murder. The Court of Appeals in San Antonio, Texas, agreed with the trial court and jury.

## WHAT DOES THIS MEAN?

With this ruling, where does that leave property owners and/or managers? Owners are now in a position where it is imperative that they know the criminal activity in the area. Additionally, they must take the proper security precautions to limit liability. However, how do you do this?

First, the long standing rule is that you do not owe a duty to a person for the criminal acts of a third party. However, that rule no longer applies if the crime that took place was foreseeable. So, what crimes are foreseeable?

A crime is foreseeable if there is a “general danger” in the area. [\*Timberwalk Apts. v. Cain\*, 972 S.W.2d 749 \(Tex. 1998\)](#). Here is a list of questions that the Texas Supreme Court considered when analyzing “general danger” in the area:

What kind of previous crimes were committed on or around the property?

What was the proximity of those crimes?

How recent were these crimes?

How frequent are crimes?

What is the similarity of the crimes?

What kind of publicity did these crimes get?

In this case, the central issue was, Was it foreseeable that this man would have been shot in a mall by a stranger? The Plaintiffs’ attorney put on evidence that there had been burglaries and shootings before this incident in the area. Therefore, the jury found that this crime was foreseeable because of this evidence of prior crimes.

Now, how do you gauge foreseeability? Also, if you think that crime is foreseeable, then how do you handle litigation?

In our next issue, we will address these questions and offer tips to guide you in the right direction.

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