

**DISTRICT OF COLUMBIA SHOOTING AFTER CHEERLEADING EVENT
BAILEY v. DISTRICT OF COLUMBIA**

**DISTRICT OF COLUMBIA COURT OF APPEALS
December 7, 1995.**

In this case, plaintiff Johnnie E. Bailey was shot as she was leaving a cheerleading competition sponsored by the defendant District of Columbia. The facts of the case were as follows:

On November 17, 1989, Bailey paid an admissions fee to attend a cheerleading competition at Evans Junior High School ("Evans"), on 5600 East Capitol Street, N.E., where one of her daughters was competing. The District's Department of Recreation ("Department") sponsored the event for cheerleading teams from recreation centers located in Ward Seven. When the competition ended at about 9:00 p.m., the crowd, estimated at between five and six hundred people, began leaving the school gymnasium through a door to the outside. After Bailey had left the building, but while she was still on school grounds, an **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.** There was no evidence that the people involved in the exchange of gunfire were connected with the District government.

In her complaint, Bailey **alleged "negligence and breach of duty by the District for failing to provide sufficient security personnel at the cheerleading competition."** Further, Bailey claimed that **"the District knew, and 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."** As a result, Bailey contended that "the defendant District of Columbia had 'an increased awareness' of the criminal act that caused her injuries."

The District countered through affidavits (i.e. sworn statements) and depositions (i.e., out of court sworn testimony) that **"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."** Furthermore, the District asserted that **"Department officials responsible for security notified the police department of the event and requested assistance with crowd control."** Although, no police appeared before the shooting took place, Bailey's complaint against the District did not allege negligent or inadequate general police protection under the circumstances of this case. As noted above, Bailey based her claims against the District on **allegations of landowner liability for the criminal acts of unknown third parties on the premises at the time of the shooting.**

In ruling on the landowner liability issue, the trial court held as follows that **"there was insufficient record evidence to establish that the criminal act in this case was reasonably foreseeable"**:

[T]he question is not whether defendant should have known that fights, or minor scuffles might erupt at this gathering of 500 - 600 people on school property in the absence of an adequate security presence, including at the least a police cruiser. Rather, the **question is whether the District had a duty to guard against a reasonably foreseeable risk 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.** While indiscriminate shootings occur with sickening regularity in our community, and some even more tragically occur at or near school property, this does not mean that the city can be found liable in tort for all such shootings.

While the case law teaches that the foreseeability calculus does not require plaintiff to prove that a previous shooting had occurred at Evans Junior High School after a cheerleading competition to establish the District's increased awareness of the probable danger of a particular criminal act, the evidence in the Court's view must **at least demonstrate that the District should have anticipated the prospect of violent criminal conduct.**

Under such circumstances, the trial court stated: "Foreseeability of the risk must be more precisely shown because of the extraordinary nature of criminal conduct."

Where an injury is caused by the intervening criminal act of a third party, this court has repeatedly held that liability depends upon "a more heightened showing of foreseeability" than would be required if the act was merely negligent.

Having found "insufficient record evidence to establish that the criminal act in this case was reasonably foreseeable," the trial court granted summary judgment in favor of the District. Bailey appealed.

In the opinion of the appeals court, the trial court had correctly ruled **"the evidence must at least demonstrate that the District should have anticipated the prospect of violent criminal conduct"** before the District could be held liable. However, in this particular instance, the appeals court found as follows that **Bailey had failed to offer "evidence of actual criminal activities" or "proof of inadequate security, that could have put the District on notice of the foreseeability of the type of harm she suffered"**:

Although the occurrence of shootings in, and in the vicinity of, the District's public schools is an unhappy reality, we agree with the trial court that **such "generic information," by itself, does not create a duty on the part of the District to protect against the use of firearms** under the circumstances presented here. In short, there are insufficient facts in this record to support a determination that the District should have had an "increased awareness" that some third party's unlawful use of a firearm would cause Bailey's injuries.

As characterized by the appeals court, **Bailey's evidence consisted "primarily of assertions that drug use, shootings, and other criminal acts occurred in the area surrounding the school."** In evaluating the weight to be given such evidence, the appeals court found **"the local crime rate was by no means sufficient, by itself, to impose liability."** In particular, the appeals court noted **that Bailey had failed to produce specific "evidence of any shooting incidents, assaults, or other gun-related violence at any Department cheerleading competition or any other Department event held at Evans Junior High School":**

Indeed, with respect to the safety of cheerleading events, the District presented evidence to the contrary. Bailey only offered affidavits [i.e., sworn statements] of witnesses who asserted that the area around the school was a "high drug area" and that shootings occurred in that neighborhood. Moreover, while there was testimony from the school principal that police officers were assigned to the school to prevent trespassers during school hours, the trial court noted that the principal "provided no information with respect to the seizure of firearms at the school, assaults committed by unauthorized school visitors, or the use of firearms around the school during the school day or during after school events held at Evans"...

Bailey proffered no expert testimony regarding the safety standards applicable in circumstances similar to those present here. In addition, there was no evidence of prior gun-related violence or assaults occurring at the school or at any of the many cheerleading competitions that had been held anywhere in the city. In fact, as we have noted, evidence supplied by the District established the absence of any criminal activity at those events.

As a general principle, the appeals court acknowledged that "particular care is required by school officials when the safety of young children is involved."

In appropriate circumstances... where numerous breaches of security were present, increased measures of protection from potential harm for young children were necessary for the District to avoid liability.

Such circumstances did not exist in this instance because "Bailey was not a child who was particularly vulnerable to the conduct that befell her." Further, the appeals court found no other "circumstances or facts in the record from which a jury could find that the District had a 'heightened' or 'increased' awareness of type of criminal act which occurred":

Nor did this case involve an intrusion by an outsider into a place... which one would necessarily expect to be safer than other places where the public might gather. Bailey was simply one of several hundred people at a public event supervised by Department of Recreation personnel who were present for crowd control.

The appeals court, therefore, concluded that "the trial court was correct in ruling that the record evidence was insufficient to establish that the criminal act in this case was reasonably foreseeable." Accordingly, the appeals court affirmed the judgment of the trial court in favor of the defendant District of Columbia.