

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

James C. Kozlowski, J.D., Ph.D.
© 2003 James C. Kozlowski

In the case of *Henry v. Parish of Jefferson*, NO. 2002-CA-748 (La.App. 5 Cir, 12/30/02), plaintiffs appealed a jury verdict which had found Jefferson Parish Department of Parks and Recreation not liable for several shootings which had occurred at the Marrero Action Center Playground on the evening of November 14, 1992. The facts of the case were as follows:

On the afternoon of November 14, 1992, Lakesha Lambert ("Lambert"), who was then a minor, appeared at the Marrero Action Center (MAC), in order to rent the upstairs room of the gym for her "Sweet Sixteen" birthday party. In booking the room for the party, Lambert was assisted by playground supervisor, William Coleman (Coleman). Lambert was required to fill out a form in conjunction with the room rental. On the form, Lambert indicated that the party would last from 8:00 p.m. until 1:00 a.m., and that eight chaperones would be present. Based on these assurances, Coleman allowed Lambert to reserve the room, as there was no MAC prohibition against renting rooms to minors. Because the amount of guests indicated on the form was below 100 persons, Jefferson Parish Recreation Department rules did not require the mandatory presence of a security officer. The party was by invitation only.

On the night of the November 14, Coleman twice called the Jefferson Parish Sheriff's Office, once to have the JPSO pass by as part of their normal rounds, and the second time to report an excess number of cars in the MAC parking lot. During the course of the evening the party drew many uninvited individuals who congregated in the MAC parking lot. At 12:06 a.m. on the morning of November 15, Coleman had called the JPSO a third time to request assistance in shutting down the party when, at the same time, he heard gun shots being fired. After police arrived, among several victims who had been shot, it was discovered that Corey Henry had been killed by the gunfire and that plaintiff, Curtis Jones, had become paralyzed as a result of his bullet wounds.

UNFORESEEABLE CRIMINAL ACT?

In determining "liability for injury of governmental agencies operating playgrounds," the appeals court applied the following legal standard:

Municipalities must exercise ...reasonable care under the circumstances. The municipality is not the insurer of the safety of those making use of such facilities, neither is it required to eliminate every source or possibility

of danger. The duty is not to insure against the possibility of an accident, but to act reasonably.

In so doing, however, the appeals court acknowledged that "other courts have held that public entities have no legal duty to anticipate unforeseeable criminal acts that occur in public places."

Applying these principles to the facts of the case, the specific issue before the appeals court was whether the jury erred when it had found that Jefferson Parish "was not negligent or at fault for the injuries sustained by plaintiffs resulting from the criminal acts which occurred on the MAC premises. " As described by the appeals court, the jury was presented with the following evidence:

Tim Whitmer, Administrator of the Westbank Recreation Department, testified that, depending on the type of event, the booking and policy procedure in 1992 was silent as to the specific age of those who would rent a facility, and that the determination was made on a case-by case basis by the supervisor. Whitmer also testified that in regard to the department's 1992 policies, there were no specific number of chaperones was needed if the renter was under 18 years of age, and that this, once again, was left to the supervisor on a case-by case basis for "same day bookings." Whitmer stated that typically only one park personnel would be on hand for an event unless it was a rather large event. The staff member on hand would also have the authority to shut down the party at his discretion. For events that served alcohol, "one uniformed deputy" was required for gathering of 100-199 people; however, same day bookings with no alcohol would not require a policeman.

The supervisor's responsibility was to make sure that "nothing exceeded that it was supposed to exceed" and that "everything was under control." There was no formal procedure in place stating when a supervisor is supposed to call the Jefferson Parish Sheriff's Office. This was also left to the discretion of the supervisor on a case-by-case basis. Whitmer further stated that after his investigation into the incident, he was very pleased with Coleman's performance, and felt that Coleman had gone above and beyond his job duties by calling police earlier in the evening to monitor the MAC...

William Coleman was the MAC supervisor at the time of the party. He testified that Lambert had an adult with her at the time she made the booking. He stated that it was impossible to get a deputy on same day bookings through the Sheriff's department. When the party started, Coleman saw three or more adults in the party room at the time the party started. At no time during the night did the party exceed 100 people. Coleman said that he checked in the party room several times that night. At 8:15, he called police and asked for a unit to pass through during

normal rounds. He also checked the parking lot several times that night as well. Coleman testified that he never saw marijuana or alcohol at the party or in the parking lot during the night. At 10:00 p.m., Coleman called police to report excess cars in the parking lot.

Coleman consulted with Mrs. Lambert and told her that if the crowd outside became unruly, he would shut the party down. At approximately 12:00 a.m., Coleman did shut the party down because of the crowd. Lambert told him that she did not know the people outside. While shutting down the party, Coleman called police to help flush out parking lot. While on the phone with police, he heard the first shot fired.

CONDUCT WEAPONS SEARCH?

As noted by the appeals court, plaintiff had “solicited the testimony of three experts who concluded that Jefferson Parish's negligence consisted of several acts, both leading up to and on the night of the party itself.” Specifically, plaintiff’s experts claimed that Jefferson Parish was negligent for “renting the activity room to a minor” and “failing to explain the Recreation Department's stated policy and procedures as they pertained to the room rental.” Further, plaintiff’s experts claimed Jefferson Parish was negligent for “not requiring a JP Deputy to be on duty, and not requiring adult supervision, despite knowledge of the known characteristic and instincts of minors when gathered in a group, and the probability of serious injury when such supervision is not required.”

In addition to a JP Deputy and adult supervision, plaintiff’s experts maintained that “Coleman should have been on hand to supervise the party” and “a recreation employee should have patted down party goers for weapons.” Further, plaintiff’s experts testified that “Coleman should have shut down the party earlier if more than 100 persons attended.” In particular, plaintiff’s experts asserted that “Coleman had a duty to shut the party down when a crowd appeared in the parking lot at 10:16 p.m.; and finally that the shooting was foreseeable because it occurred in a high crime area.”

Despite plaintiff’s assertions and expert testimony to the contrary, in the opinion of the appeals court, “the jury had ample evidence before it to conclude that Jefferson Parish exercised reasonable or ordinary care in regard to the party.” In reaching this conclusion, the appeals court took particular note of the fact that “Coleman did not violate the Jefferson Parish policy in renting the room to Lambert, and that such rentals were left to the supervisor's discretion.”

Accordingly, based upon the evidence and record in this case, the appeals court found “no error in the jury's determination that the Parish had no duty, through William Coleman, to conduct pat down weapon searches of the guests entering the party in the upstairs room.” Moreover, in response to plaintiff’s claims of inadequate adult supervision, the appeals court noted the following:

Coleman testified that at the beginning of the party, he noted that three

adults were present. The record indicates that at least five named adults were present at the party over the course of the evening: William Coleman, Linda Lambert, Brenda Frazier, Tracy Kent and Tammy Williams. Coleman testified, and corroborating testimony established, that he, himself, had checked in on the party several times during the night, further employing the aid of Jefferson Parish Deputies to monitor the proceedings.

Although there was “conflicting testimony regarding the number of persons present at the party, pertaining to both the crowd contained in the upstairs room of the MAC, and in the parking lot,” the jury had apparently determined that “Coleman did not let the party in the upstairs room exceed 100 persons.” Moreover, in regard to the uninvited crowd that had assembled in the parking lot downstairs, the appeals court noted that “Coleman summoned Jefferson Parish Deputies at approximately 10:00 p.m. that night to report an excess of cars in the parking lot.”

As defendants point out, the Deputies that did appear to assess the scene determined that no intervention was necessary. The jury was further presented with Coleman's testimony that he finally made the call to close down the party and request police assistance when the crowd assembled in the parking lot became unruly. It was during this call for assistance that the shootings occurred.

Also, based upon the following evidence, the appeals court found it was reasonable for “the jury to determine that the shootings which took place were not related to the MAC party at all.” Rather, the following evidence indicated that the 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.”

[P]laintiffs were involved in a verbal altercation that occurred just prior to the party at the Belle Promenade Mall, located on the West Bank of Jefferson Parish. A group from Marrero, that included Curtis Jones and Corey Henry, took issue with the fact that members of a rival Westwego group, had communicated with a certain female while at the mall. Carl Jones, who was present at the Belle Promenade incident as a member of the Marrero group testified that the Westwego group went to the MAC on the night of the party with the "mall incident" on their minds. Brandon Craig also testified that after the shootings of Corey Henry and Curtis Jones, the only reason he could come up with for why it happened was the incident at the mall.

Moreover, when asked whether it was just happenstance that the confrontation which began at the Belle Promenade Mall produced the shootings in the parking lot at the MAC Playground, plaintiff's expert admitted: “It could have happened anywhere.”

As characterized by the appeals court, plaintiffs claimed the shootings were foreseeable, given "the location of the MAC in a high crime area." The jury, however, rejected this argument. Further, the appeals court noted that plaintiff's own expert acknowledged that there had been "no homicides at the MAC prior to November 14, 1992." Under such circumstances, the appeals court found the shootings were "a random, unforeseeable criminal attack which could not easily have been prevented." Accordingly, Jefferson Parish "had no legal duty to anticipate such an attack." As a result, the appeals court found the jury had not erred in concluding "Jefferson Parish was not at fault or negligent for plaintiff's injuries on the grounds that such an attack was foreseeable." The appeals court, therefore, affirmed the jury verdict and judgment of the trial court in favor of defendant Jefferson Parish.