

## ILLINOIS VILLAGE LIABILITY FOR ASSAULT AFTER ROCK CONCERT

### COMASTRO v. VILLAGE OF ROSEMONT

461 N.E.2d 616 (Ill.App. 1 Dist. 1984)

Appellate Court of Illinois, First District, Fourth Division

March 15, 1984

In this case, plaintiff David Comastro sued the Village of Rosemont "for injuries he **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.**" The Village responded that "it had no duty to protect Comastro from **criminal attack.**" The trial court agreed and granted the Village's motion for summary judgment; Comastro appealed. The facts of the case were as follows:

Comastro, his brother, and some friends were among the audience at a September 20, 1980 rock concert presented by the group AC/DC at the Rosemont Horizon, a large arena owned and located in the Village of Rosemont. When Comastro and his girlfriend arrived at the Horizon, he saw several Rosemont policemen directing traffic into the parking lot. At each entrance to the arena, police personnel wearing yellow jackets were conducting pat-downs of the incoming patrons and confiscating any bottles, cans, fireworks, drugs, or weapons found. During the concert, the traffic officers patrolled the parking lot to discourage vandalism, catch bootleg vendors of AC/DC items, and prevent damage to the private property surrounding the Horizon.

After the concert was over, the police assumed the task of helping the 18,000 spectators leave the building in a safe orderly manner. According to the depositions of Comastro and the resident manager of the Horizon, no fights or arguments had broken out during the concert, no one was observed drinking, and the only "rowdiness" was some dancing in the aisles.

Following the concert, the members of Comastro's party left the arena, stopped briefly on the walkway outside the door and then parted to go to their cars. As Comastro looked back, he saw a large male hit his brother; he went back and asked what the trouble was, whereupon the unknown male attempted to punch him. Comastro hit back and broke his hand. At that moment another assailant began hitting Comastro on the back of the head, and an empty bottle came down on his shoulder. With that, the assailants fled. Comastro located his girlfriend, but neither she nor any of his brother's friends had witnessed the incident. Although Comastro did not report the attack to any Horizon official or local police, he did relate the incident to his attorney, who thereafter filed this suit.

According to the appeals court, "a plaintiff must prove that the defendant breached a duty owed to plaintiff and thereby caused plaintiff's injuries" in order to prevail in a negligence action. As described by the appeals court, "**the general rule is that a person has no duty to protect someone from criminal attack by third persons.**" However, the court recognized four "special relationships" as exceptions to this general rule.

These four **special relationships which give rise to a duty to protect another from harm** are: (1) carrier-passenger, (2) innkeeper-guest, (3) **business inviter-invitee** and (4) voluntary custodian-protectee under certain limited circumstances. In each of these relationships, **one may be required to protect an individual from criminal attacks by third parties under circumstances indicating "knowledge of previous incidents or special circumstances that would charge the owner with knowledge of the danger and the duty to anticipate it."**

Under the facts of this case, **the special relationship involved is the duty owed by an owner of a business premises (Village, owner of Horizon) to a business invitee (concert attendee Comastro).** Specifically, the **business purpose was the operation of a public arena by a municipality.** Under such circumstances, the appeals court stated: "A municipal corporation engaged in a non-governmental function, such as the operation of a public stadium or arena, will be held to the same standard of care as that imposed on a private party." Further, the **duty imposed on a private party is "to exercise reasonable care under the circumstances to the extent of the undertaking."**

In special relationship situations, such as the owner of a business premises to business invitees, the nature and extent of the undertaking imposes a duty to exercise a high degree of care, including "the **responsibility to prevent injuries which could have been foreseen and avoided.**" According to the appeals court, "business visitors subjected to personal attack are owed the same duty by the premises owner as are owed by the [common] carrier [i.e. public buses, trains, planes, etc.] to its passengers." As described by the appeals court, the duty owed by common carriers to passengers is as follows: "Once a common carrier has **knowledge of prior criminal acts or a condition which might result in an assault** on its passengers, it is **duty bound to take reasonable precautions for the safety** of its passengers."

Applying these principles to the facts of the case, the issue was, therefore, "**whether or not the Village had sufficient knowledge so that the likelihood of danger to its patrons was reasonably foreseeable.**" Given testimony by Comastro and Horizon personnel that "**no unruly behavior had taken place in the arena, no fights had broken out, and no drinking had been observed,**" the Village maintained "it had insufficient warning of possible danger to its patrons to hold it liable for negligence." However, in the opinion of the appeals court, the following facts from the testimony of the deputy chief of police indicated the **Village "had advance notice of potential trouble at the AC/DC rock concert."**

The police department had telephoned several other locations where the group had performed and had learned of the specific problems previously encountered by those other arenas. Further, AC/DC had performed at the Horizon only a year before, at which time, according to [Deputy Chief of Police] Stephens, "we learned pretty good. \*\*\* The band attracts a rowdy type of [crowd]- a very rowdy [group], drinkers, drug users."

As a result, the appeals court found that **"the Village had sufficient advance warning of potential trouble at the concert in question to establish a duty owed to its business invitees to take reasonable steps and exercise the degree of care and vigilance practicable under the circumstances to prevent the injury."**

**The jury (or judge in a non-jury trial) would determine whether particular precautionary measures are reasonable under the circumstances.** In other words: "What precautions are reasonable is a question for the trier of fact." Applying this principle to the facts of this case, the appeals court stated: **"Whether the actions of the Village in deploying police everywhere except the parking lot after the concert constituted a breach of duty is a question to be determined by the trier of fact."**

The Village also argued that **"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."** However, in the opinion of the appeals court, **"the 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 and supplying only general police protection to preserve a community's well-being.** On the contrary, the appeals court found **"the policemen...maintaining order inside the Horizon were wearing yellow jackets instead of their official uniforms indicat[ing] the police were providing special protection to specific members of the community.** Consequently, **municipal immunity for general police protection would not apply to special protection provided to attendees at a rock concert.**

**The duty of the police acting in their official capacity to preserve a community's well-being is owed to the community at large, not to specific members of the community; it is this general duty, not any special duty owed to a specific individual or group, that is subject to the general rule that a municipality is not liable for failure to supply general police protection.**

According to the appeals court, **"a 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."** Given the facts of the case, the appeals court found this duty applicable because the **Village had provided Horizon patrons with "greater protection than that offered to the village residents at large."** As a result, the appeals

court concluded that "the **Village owed Comastro a duty as a patron of the Horizon to exercise reasonable care to protect him from criminal attack.**"

It appears clear to us that when the situation in the instant case is **analyzed under either the business inviter-invitee theory or the police protection theory**, the result is the same: the **Village of Rosemont owed Comastro a duty to use reasonable care in providing for his safety while he was on the premises of the Horizon...**Whether the Village breached that duty by deploying the security personnel as it did and thereby proximately caused Comastro's injuries are material issues of fact which must be determined by the trier of fact.

The appeals court, therefore, **reversed the summary judgment in favor of the Village and remanded the case to the trial court.** On remand, the **trial court would fully consider Comastro's allegations of negligence based upon inadequate security at the Horizon.**