

Love did not ask Murray to return, and instead disregarded Murray's warnings, left the restaurant, and put Dean in charge. Love did not count the money in the cash registers or deposit any money in the safe before he left. When Dean discovered that Love had not counted the money in the registers, he counted it and deposited the excess in the safe. Love never returned to the restaurant that night.

At around 4:00 A.M., three men, later identified as Gerald Marshall, Ronald Worthy, and Kenny Calliham, attempted to rob the Whataburger. Marshall climbed through the drive-through window and chased Dean, eventually into the back of the restaurant, where he demanded that Dean give him the key to the safe. Marshall told Dean that if Dean did not give him the key to the safe, Marshall would shoot him. When Dean, who did not have the key, failed to produce it, Marshall shot him in the face and fled the scene with Worthy and Calliham. Dean died immediately. The robbers left with nothing, but afterward robbed a Shipley Doughnut store equipped with video surveillance.

Police later connected Love to the robbery, and the State charged him with capital felony murder. A jury found Love guilty, and the trial court assessed punishment of life in prison. The court affirmed the conviction.

Rose Barton, individually and on behalf of the estate of her son, filed suit against Whataburger, Inc. The trial court granted summary judgment for Whataburger, holding that the shooting death of Dean was not a foreseeable event. Barton appealed.

JUDICIAL OPINION

BLAND, Justice

A negligence cause of action has four elements: (1) a legal duty owed by one person to another, (2) a breach of that duty, and (3) damages (4) proximately caused by the breach. In the context of the employer-employee relationship, a company has a duty (1) to provide rules for the safety of employees, and to warn them of reasonably foreseeable hazards; (2) to furnish reasonably safe machinery and equipment; (3) to furnish a reasonably safe place to work; and (4) to exercise ordinary care to select careful and competent fellow employees.

Whataburger does not dispute that it owed a duty to Dean, as its employee, but observes that its duty is to protect its employees from foreseeable harms. The issue in this case, whether analyzed as a part of the duty element of negligence or the causation element, is the foreseeability of the criminal conduct that led to Dean's murder. As the Texas cases that discuss the foreseeability of intervening criminal conduct do so, in the main, in the context of the element of duty, we do so as well.

The threshold inquiry in a negligence case is duty. As a general rule, "a person has no legal duty to protect another from the criminal acts of a third person." However, if a criminal's conduct is a foreseeable result of the prior negligence of a party, the criminal act may not excuse that party's liability. To impose liability on a defendant for negligence in failing to prevent the criminal conduct of another, the facts must show more than conduct that creates an opportunity to commit crime—they must show both that the defendant committed negligent acts and that it knew or should have known that, because of its acts, the crime (or one like it) might occur.

Thus, to impose a legal duty to prevent the criminal conduct of another, the crime must have been reasonably foreseeable at the time the defendant engaged in negligent conduct. Foreseeability exists if the actor, as a person of ordinary intelligence, should have anticipated the dangers his negligent act creates for others. Importantly, "[f]oreseeability requires more than someone, viewing the facts in retrospect, theorizing an extraordinary sequence of events whereby the defendant's conduct brings about the injury."

Negligent Hiring

Barton first contends that Whataburger's negligence in hiring Love as a restaurant manager caused the aggravated robbery that led to Dean's murder. Barton produced evidence of an investigative report that revealed Love was convicted of a felony offense of "dealing cocaine" in Indiana in September 1993, and served one year in jail. Love was convicted of felony nonpayment of child support in Texas, in November 2002, the week before he applied for a managerial position at Whataburger. Whataburger performed a background check on Love before hiring him, but only searched for criminal convictions in Harris County that occurred between November 1995 and November 2002. The search did not reveal either of the two felony convictions. Barton alleges that Whataburger's failure to conduct an adequate background check ultimately caused the aggravated robbery that led to Dean's murder.

While Love's convictions, if discovered, should have raised Whataburger's suspicions about his fitness to manage a restaurant, under Texas law, they did not make his eventual participation in an aggravated robbery leading to murder reasonably foreseeable. Even assuming that information about Love's prior convictions, if known, would have torpedoed Love's employment with Whataburger, his criminal acts of selling cocaine and failing to pay child support are different from an aggravated robbery—neither crime inherently requires violence or theft, the two essential ingredients of an aggravated robbery. The record contains no