

Foreseeability: Expectation of Confrontation

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As reported by the local ABC affiliate, on August 3, 2016 a patron of the Travelodge Motel in Costa Mesa, CA was assaulted with a tire iron while confronting suspected thieves in the adjacent parking lot. Fortunately, the patron received only minor injuries and was treated at a local hospital. As can be seen in the reference articles below, confrontation of persons attempting property crimes has often resulted in physical harm or death to the victim. In matters in which I have provided consultation, these parking lot confrontations have resulted in a beating, a stabbing, and a shooting.



Therefore, I propose that having a history of crimes against property, i.e. car theft, theft from vehicles, etc., in a facility like a parking lot or garage establishes foreseeability of the potential for a violent crime based upon what I define as an “**Expectation of Confrontation**”.

It is a natural reaction for a person observing a potential theft of or from their private vehicle to confront the perpetrator and attempt to stop the theft. Police adamantly recommend that a person in the act of theft should never be confronted but that the potential victim immediately call 911. While this is the recommended and safest mode of action, it is difficult to resist this natural tendency to directly intervene to protect your property. Particularly when it is common knowledge that normal police response times would not be quick enough to actually prevent the theft and the victim would merely be watching as their property or vehicle was driven away.

In my consulting practice I often use this premise of the Expectation of Confrontation to convince clients that they need to upgrade security in their parking garages and lots with great success. It is a premise clearly understood by laymen since they recognize that they themselves might have the same reaction if they see someone attempting to steal something belonging to them. Additional protective measures might include enhanced lighting that meets the criteria established in the *Guideline for Security Lighting for People, Property, and Public Spaces*, published by the Illuminating Engineering Society; CCTV surveillance; emergency call stations; and mobile security patrols. The level of protection chosen should be based upon a thorough threat and risk assessment.

While this correlation may seem obvious in determining appropriate security measures, the correlation seems not so obvious in litigation matters where the question of foreseeability is involved. In some jurisdictions, foreseeability is very narrowly defined as a history of incidents identical to the incident that resulted in the injury or loss suffered by the plaintiff. So, by this definition, a history of crimes against property in the parking lot of a facility would not indicate foreseeability of a physical assault or worse. As has been shown above and in the references below, the history of crimes against property has a direct correlation to the potential for a physical altercation between the victim and the perpetrator.

Therefore, a facility owner or manager should be held to a standard of care that requires them to be aware that physical confrontation may occur in a facility with a history of property crimes and implement appropriate security measures to help mitigate the potential occurrence thereof.

As our judicial system is based largely on common law, the decisions of our judges and justices should be based upon common knowledge and understanding. If the common prudent man can recognize the linkage between crimes against property and the potential for physical confrontation then so should our legal system. By constraining the definition of foreseeability, we often decide against persons violently attacked by felons with no value for human life or well-being and support property owners and managers who have not taken appropriate steps to protect their patrons, guests, and others on their property.

Reference Incidents:

<http://www.ctvnews.ca/canada/fatal-parking-lot-confrontation-in-northwestern-alberta-leads-to-murder-charge-1.2907277>

<http://katu.com/news/local/caught-on-video-men-confront-suspect-wanted-in-multiple-auto-thefts-in-salem>

<http://abc7.com/news/man-confronting-thieves-at-oc-motel-attacked-with-tire-iron-police-say/1456289/>

<http://www.chicagotribune.com/news/local/breaking/chi-shots-fired-at-police-andersonville-20150214-story.html>

<https://lasvegassun.com/news/2017/jul/13/shooting-investigated-at-miracle-mile-shops/>

<http://www.turnto23.com/news/local-news/two-people-shot-at-mojave-fastrip>

<http://www.foxnews.com/us/2017/09/17/fort-bragg-soldiers-charged-in-deadly-nc-parking-lot-shooting.html>

<http://www.fayobserver.com/news/20170927/skibo-road-walmart-parking-lot-shooter-considered-armed-and-dangerous-victim-hospitalized>

<http://fox5sandiego.com/2017/07/31/accused-parking-lot-shooter-charged-with-murder-robbery/>

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