

Scope of employment for jury, not court

Today's 7th U.S. Circuit Court of Appeals case deals with state substantive law and the question of whether a security guard's beating of two arrestees in a holding cell was within the scope of his employment by a security service. *Jones v. Patrick & Associates Detective Agency*, 442 F.3d 533 (2006).

Lewis Pratt, employed by Patrick & Associates Detective Agency Inc., was working his last night as a security guard at the Prairie View Apartment Complex in North Chicago. He saw Joseph Pressley come out of the apartments with what appeared to be a bag of marijuana and attempted to restrain Pressley. Pressley ran off, leaving his car.

Later that night, when Pressley returned for his car, Pratt again attempted unsuccessfully to restrain him. Pratt got his finger slammed in Pressley's car door as Pressley drove away.

Pratt reported the incident to North Chicago police, as he was required by his employer.

North Chicago police spotted Pressley's car and arrested him, placing him in a holding cell. Pratt was informed and went to the North Chicago police station, across the street from the Park View Apartments, to file his report.

Pratt was in his security uniform and somehow obtained access into the holding cell where he beat Pressley using his billy club and mace. Pratt also — apparently mistakenly — beat Zachary Jones, a 14-year-old in a nearby holding cell, who had no involvement with the Prairie View Apartment events.

Pressley and Jones sued, among others, Pratt's employer on a respondeat superior theory.

Patrick & Associates moved for summary judgment contending that there was no respondeat superior liability because Pratt acted outside the scope of his employment. The District Court granted summary judgment.

On appeal, the 7th Circuit, in an opinion written by Judge Terence T. Evans, reversed, finding that, although the case pushed the boundaries of scope of employment, the issue of Pratt's scope of employment was for the jury, not the court.

Noting that Illinois substantive law applied in this supplement jurisdiction matter, Evans set out the applicable test for scope of employment in Illinois:

"That question is governed by state law, and Illinois courts typically decide scope-of-employment issues in line with the principles outlined in the



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By Jay S. Judge

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Restatement of Agency. See, e.g., *Wright v. City of Danville*, 174 Ill.2d 391, 675 N.E.2d 110 (1996); *Pyne v. Witmer*, 129 Ill.2d 351, 543 N.E.2d 1304 (1989); *Davila v. Yellow Cab Co.*, 333 Ill.App.3d 592, 776 N.E.2d 720 (2002). To wit:

'(1) Conduct of a servant is within the scope of employment if, but only if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master, and (d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master.' Restatement § 228."

The court reviewed several Illinois cases involving an intentional battery by an employee found to be within the scope of employment:

"In *Davila*, for example, a taxi driver who was stuck in traffic deliberately ran into a police officer and dragged him for 25 feet. The court concluded that a jury could reasonably find the incident to be within the scope of the driver's employment. Similarly, in *Bonnem v. Harrison*, 17 Ill.App.2d 292, 150 N.E.2d 383 (1958), a mechanic on an errand to an auto parts store hit the store's owner with a broom handle in response to a racial insult. Again, the court found the battery to be plausibly within the scope of the mechanic's employment. And in *Bryant v. Livigni*, 250 Ill.App.3d 303, 619 N.E.2d 550 (Ill.App. 5 Dist. 1993), a drunken, off-duty grocery store manager saw an 8-year-old urinating against the store's east wall, chased the kid to a parked car, grabbed a different kid out of the car (a 4-year-old), and threw him into the air, putting him in the hospital for 4 days. 'We agree,' the court said, 'that the conduct was outrageous. We disagree that this precludes a judgment against [the employer] based upon principles of respondeat superior.'"

Disagreeing with the grant of summary judgment, Evans noted several factors as indicia of scope of employment:

"The district court distinguished *Davila* and *Bonnem* by observing that the cab driver was transporting a passenger at the time of the assault, and the mechanic was in the process of buying an auto part as his boss had directed. Here, in contrast, the court found that Pratt 'completed his job-related business [dropping off his report] without incident, and then somehow gained access to a restricted area of the police station, where he mounted an unprovoked attack on two prisoners.' The distinction is a bit thin. The point of the attack was to get back at Pressley for the earlier run-in at Prairie View Apartments, which happened squarely in the course of Pratt's employment. All indications are that Pratt was still on duty, still wearing his uniform, and still carrying his employer-issued weapons at the time of the attacks. It was not as if Pratt spotted Pressley a few days later at Wrigley Field and decided to get even with him there during a lull in action occasioned by a pitching change. And even though the holding cell area at the police station was 'officially' off-limits to him, it's doubtful that Pratt would have been able to talk his way back there if he were anything other than a security guard in uniform. All these factors weigh in favor of finding that the issue of respondeat superior liability is for the jury to decide."

Finding that the case pushed the boundaries of scope of employment, but did, in fact, present a question for a jury to resolve, the 7th Circuit opinion concluded:

"It would be another matter if Pratt's grudge weren't work-related, or if his job didn't predictably entail the occasional use of force to subdue rule breakers. See Restatement § 245 (master can be liable for servant's intentional and tortious use of force 'if the act was not unexpected in view of the duties of the servant'). But physical confrontations are part of a security guard's job, and it's not really surprising that once in a while one of them will go too far. See Restatement § 245 comment a (when a battery arises from a dispute connected with a servant's work, the employer's liability depends in part on the customs of the enterprise and the nature of the persons normally employed for doing the work). To be sure, the attacks in this case push the boundaries of what could be expected from a security guard, and they may in

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fact be outrageous enough to fall outside the scope of Pratt's employment. But we think this is a question for a jury, not a judge on summary judgment, to resolve.

"We do not believe it is beyond dispute that Pratt left his professional

identity and position behind him when he assaulted the plaintiffs. We therefore reverse the district court's grant of summary judgment in favor of Patrick & Associates on the plaintiffs' respondeat superior claim and remand the case for further proceedings."