

Bond Case Briefs

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LIABILITY - NEW YORK

Stevens v. Kellar

Supreme Court, Appellate Division, Third Department, New York - December 19, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 08499

Plaintiff brought action against police officer and town, seeking to recover damages for personal injuries sustained in altercation between plaintiff and off-duty officer. The Supreme Court granted town's motion for summary judgment as to claims against it. Plaintiff appealed.

The Supreme Court, Appellate Division held that:

- Officer was not acting within scope of his employment, precluding plaintiff's vicarious liability claim against town, and
- Officer's prior assault conviction was insufficient to put town on notice of officer's alleged inclination to violent conduct.

Municipality cannot be held vicariously liable for acts perpetrated by a member of its police force in the course of engaging in a personal dispute, without any genuine official purpose, whether or not the police officer characterizes such conduct as an arrest or incident to an arrest.

Police officer was not acting within scope of his employment at time of his altercation with plaintiff, precluding plaintiff's vicarious liability claim against town, in suit seeking damages for personal injuries sustained in that altercation. Officer was not on duty when he went to pub in his girlfriend's personal vehicle after hearing about plaintiff "hitting on" girlfriend, and he was not in uniform, was not carrying his police radio, did not identify himself as police officer, did not report alleged assault upon Allen to his dispatcher or another law enforcement agency, did not at any time attempt to take plaintiff into custody, and was not carrying his weapon.

Police officer's prior conviction for assault was insufficient to put town on notice that he was inclined toward violent conduct, precluding plaintiff's claims that town negligently hired, trained, and/or supervised officer. Town was aware of officer's prior conviction and had discussed it with officer prior to hiring him, and town never received any complaints regarding officer's behavior.