

SUPREME COURT OF LOUISIANA

No. 99-C-1584

RICHARD BRASSEAU ET UX

Versus

THE TOWN OF MAMOU ET AL

LEMMON, J., Concurring

Torts of an off-duty employee never occur during working hours or at the regular place of work. Such torts, therefore, do not meet the first two LeBrane factors and seldom produce vicarious liability. However, a police officer is generally considered to be on duty twenty-four hours per day, while most other municipal employees are truly off-duty when not at time and place of work, and this is the principal reason that municipalities are occasionally held vicariously liable for torts of an off-duty police officer. A police officer is duty-bound to restore and maintain peace in a highly charged situation, whenever and wherever it occurs. Moreover, a police officer generally is issued a badge of authority and a weapon. Because of these factors that are not applicable to other municipal employees, the employing authority may be vicariously liable for the tort when a off-duty police officer who, while out of uniform and away from his or her regular place of employment, announces his or her authority and then performs acts that can reasonably be viewed as action usually undertaken by a police officer, and commits a tort in the course of such conduct. See Cheatham v. City of New Orleans, 378 So. 2d 369 (La. 1979).¹

¹However, tortious conduct of an off-duty police officer frequently does not produce vicarious liability. See, e.g., Roberts v. Benoit, 605 So. 2d 1032 (La. 1991); Russell v. Noullet, 98-0816 (La. 12/1/98), 721 So. 2d 868. The City may well have been vicariously liable for Officer Noullet's off-duty action if he had committed a tort as part of a continuous course of conduct after

Because of these differences between municipal employees, it is a question of utmost importance whether Lavergne was a police officer or was a municipal employee who was not duty-bound to take appropriate police action whenever and wherever it was necessary to keep the peace.

Here, it is undisputed that Lavergne was employed by the Town as a part-time dispatcher for less than two months, that he was classified and paid as such, and that he was not issued a weapon as was done immediately upon the hiring of police officers. Except on one day when extra patrolmen were hired for a special occasion, he never performed the duties of a patrolman (although he was permitted at times to voluntarily ride along with and observe officers on duty). Moreover, there was no evidence that he was required, by department rules or otherwise, to be on duty twenty-four hours per day to quell disturbances of the peace. At the time of the tort, Lavergne was not exercising any function for which he had been employed by the Town, and there was no connection between his conduct in displaying his badge outside of Mamou and the business of the Mamou Police Department.

I therefore conclude that Lavergne, at the time of the attack, was not a police officer for whose torts the Town would be vicariously liable. The trial court's contrary finding was manifestly erroneous.

announcing he was a police officer in attempting to quiet a disturbance.