
Supreme Court of the State of New York
Appellate Division: First Department

In the Matter of TAYSHANA MURPHY
by its Administratrix, TEPHANIE HOLSTON,
Plaintiff-Appellant,

-against-

THE NEW YORK CITY HOUSING AUTHORITY,
Defendant-Respondent,

-and-

TYSHAWN BROCKINGTON, ROBERT CARTAGENA,
and CLC COMMUNICATIONS INC.,
Defendants.

**Appellate
Division
Docket No.
2020-01722**

THE NEW YORK CITY HOUSING AUTHORITY,
Third-Party Plaintiff,

-against-

TERIQUE COLLINS,
Third-Party Defendant.

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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Supreme Court, New York County, Index No. 158442/2012

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	<i>ii</i>
REPLY ARGUMENT	1
I. Defendant-Respondent Continues to Mischaracterize the Record.....	1
II. Defendant-Respondent did Not Establish that the Killers Targeted the Decedent Well Before the Shooting, and did Not Establish that “Reasonable Security Measures” Would Not Have Prevented It.	2
III. The Applicability of the Targeted Victim Defense Should not be Expanded.	5
CONCLUSION.....	7
PRINTING SPECIFICATIONS STATEMENT	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Cerda v. 2962 Decatur Owners Corp,</u> 306 AD2d 169, 761 NYS2d 220 (1 st Dept 2003)	4
<u>Harris v. New York City Housing Authority,</u> 211 AD2d 616, 616-617 (2d Dept 1995).....	4
<u>Noseworthy v City of New York,</u> 298 NY 76 (1948)	4
<u>Roldan v. New York City Housing Authority,</u> 171 AD3d 418, 97 NYS 3d 122 (2019).....	5

REPLY ARGUMENT

I

Defendant-Respondent Continues to Mischaracterize the Record.

Throughout its brief, the defendant-respondent continues to mischaracterize the record.

Notwithstanding defendant-respondent's claim that the decedent Tayshana Murphy was "affiliated with Three Stacks" (defendant-respondent's brief, p.4), there is no evidence that she was a member. The defendant-respondent's cited record merely reflects that Robert Nelson and Eric Pierce spent time with her.

The record is similarly void of any evidence that Tayshana fought, hit, threw anything at, or exhibited any other form of violence towards the defendant and convicted killer, Robert Cartagena. At most, she was present when other youths fought with him, and there is no evidence that the defendant-killers even knew she was present. The defendant-respondent suggests guilt by association. At most, whether the defendant-killers believed she was present during Cartagena's altercation, and/or a close friend of those he fought with, is a jury question.

Defendant-respondent, without basis in the record, claims on page 18 of its brief that the decedent participated in “tormenting” defendant-killer Cartagena.

Finally, notwithstanding defendant-respondent’s claim on page 8 of its brief, the record fails to show that any of the teenagers “taunted” the convicted murderers after fleeing into the lobby of the Housing Authority building in question. In fact, the Trial Justice correctly pointed out on the record that the surveillance video does not show that, and in any event, the video speaks for itself. R 18, line 24 – R 19, line 9. There is certainly no evidence that the decedent taunted her murderers.

II

Defendant-Respondent did Not Establish that the Killers Targeted the Decedent Well Before the Shooting, and did Not Establish that “Reasonable Security Measures” Would Not Have Prevented It.

The defendant-respondent, the movant in its summary judgment motion, failed to establish that the defendant-killers decided to kill the decedent at any time prior to when they came upon her in the stairwell. It was Steven Reynoso and others who were identified as being involved in a bottle-throwing and other incidents with the defendant-killer Robert Cartagena earlier, not the decedent. There is no evidence that the decedent was “targeted” until she was cornered in the stairwell and a decision was made

to pull the trigger – and if this defines her as being “targeted,” it means that every random victim is “targeted.”

It has not even been established by the maker of the summary judgment motion that the defendant-killers knew Tayshana was present during Cartagena’s earlier altercation with Reynoso and others.

That Tayshana’s murder had nothing to do with any involvement by her with the earlier incidents between the perpetrators and other Grant Houses residents is evidenced by her excited utterances as she begged for her life: Respondent quotes the record in its brief: “Pierce heard “the decedent say in a loud, nervous voice ‘I’m not with them,’ and then someone responding “I don’t give a fuck,” followed by two gunshots.” R 1088, 1096. Per the testimony of Steven Reynoso, relied upon by defendant-respondent in the underlying record, he heard the decedent plead “I didn’t have nothing to do to with it. I didn’t have nothing to do with it. I had nothing to do with it” before he heard three shots. R 1908.

These excited utterances of Tayshana, and the responsive admissions by the defendant-killers, sufficiently rebut defendant-respondent’s claim that the decedent was targeted. At the very least, there exists a question of fact as to whether she was a targeted victim, as opposed to a random one. Given that the decedent is not here to testify on her own behalf, all the more weight

should be placed on the last words between her and the defendant-killers. See Noseworthy v City of New York, 298 NY 76 (1948).

Furthermore, Cerda v. 2962 Decatur Owners Corp, 306 AD2d 169, 761 NYS2d 220 (1st Dept 2003) citing Harris v. New York City Housing Authority, 211 AD2d 616, 616-617 (2d Dept 1995) requires a showing that “it [is] most unlikely that any reasonable security measures would have deterred the criminal participants.” In Harris, the targeted victim defense was applied only because the decedent was the victim of a targeted murder by a long-time enemy who had tried to kill him on at least one prior occasion. In the case before us, there is no evidence proffered by the movant of the underlying motion, that Tayshana was anything but a random target - at best for the underlying motion’s movant, a random target within a group of six youths, and at worst, a random resident of the Grant Houses. The defendant-respondent has also failed to establish that, had the broken self-locking door functioned properly, that the defendant-killers would have killed her anyway at another time, whether twenty minutes later or twenty days later (as opposed to killing someone who actually was involved in the prior altercation with Robert Cartagena. Or perhaps another random Grant Houses resident. Or perhaps, giving up on the idea entirely). At best, under these circumstances,

the applicability of the targeted victim defense should be one decided by a jury.

III The Applicability of the Targeted Victim Defense Should not be Expanded.

In some prior cases discussing the targeted victim defense, such as Roldan v. New York City Housing Authority, 171 AD3d 418, 97 NYS 3d 122 (2019), language as to the targeted victim defense is merely dicta, since the landlord's notice of a related security defect was not even established.

In other prior applications of the targeted victim defense, the victims were specifically targeted – known and targeted based upon specific individual identities, or on rare occasion, based on the victim's specific role as occupant of a specific apartment or home who was attacked by perpetrators in order to allow the perpetrators access thereto. The defense was never applied to a purported target who was one of six or more.

In the case before us, the defendant-respondent - the movant in the underlying summary judgment motion – is asking the Court to expand the applicability of the targeted victim defense to a scenario where we don't know whether the defendant-killers targeted all of the group of six, or only a specific individual in the group of six (Reynoso, who fought with Cartagena?), or any random member of the group of six. We don't even know whether Tayshana

was even considered a possible target beforehand, or whether the killers just happened to come upon her and kill her out of frustration for not finding Reynoso or any other specific target. Indeed, the killers' response to Tayshana's denial of involvement – "I don't give a fuck" – suggests that she was not targeted, and that it was only fate that caused her to be the person in the stairwell that the killers came upon, and that the decision to kill her was only made at that place and time. We don't know whether, if the killers didn't find Tayshana in the stairwell, whether they would have shot and killed any other random Grant Houses resident that they came upon... and whether the respondent Housing Authority would still be claiming "targeted victim."

CONCLUSION

Based on the foregoing, the Trial Court erred in expanding the targeted victim defense to include the random shooting of the decedent Tayshana Murphy, who may not have been targeted at all, or at most, depending on an interpretation of the facts, happened to be one in a group of six.

The Trial Court erred in applying the defense when it was not established by movant that “reasonable security measures” – a working lock – would have prevented the attack on the decedent.

The Trial Court also erred in concluding that there was no issue as to the Housing Authority’s notice of the non-working locking mechanism on the exit-only door, and otherwise erred in granting the defendant-respondent summary judgment.

As a result of the foregoing, the Trial Court’s decision granting summary judgment to the defendant-respondent, must be reversed.

Dated: New York, New York
 November 7, 2020

Respectfully Submitted,



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PRINTING SPECIFICATIONS STATEMENT
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