


State of New York
Court of Appeals



The Estate of TAYSHANA MURPHY,
by its administratrix, TEPHANIE HOLSTON,
Plaintiff-Appellant,

v.

THE NEW YORK STATE HOUSING AUTHORITY,
Defendants-Respondents,

-and-

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

THE NEW YORK CITY HOUSING AUTHORITY,
Third Party plaintiff,

v.

TERIQUE COLLINS,
Third-Party Defendant.

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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Appellate Division, First Department Docket No. 2020-01722
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 Mischaracterizes Price v. New York City Housing Authority and Scurry v. New York City Housing Authority	1
II. Defendant-Respondent Continues to Mischaracterize the Record.	2
III. Defendant-Respondent did Not Establish that the Killers Targeted Tayshana Well Before the Shooting, and did Not Establish that “Reasonable Security Measures” would Not Have Prevented her Murder.....	3
IV. The Applicability of the Targeted Victim Defense Should Not be Expanded.	6
CONCLUSION.....	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u><i>Cerda v. 2962 Decatur Owners Corp.</i></u> 306 AD2d 169, 761 NYS2d 220 (1st Dept 2003)	5
<u><i>Harris v. New York City Housing Authority</i></u> , 211 AD2d 616, 616-617 (2d Dept 1995).....	5
<u><i>Noseworthy v City of New York</i></u> , 298 NY 76 (1948)	4
<u><i>Price v. New York City Housing Authority</i></u> , 92 NY2d 553 (1998)	1
<u><i>Roldan v. New York City Housing Authority</i></u> , 171 AD3d 418, 97 NYS 3d 122 (2019)	6
<u><i>Scurry v. New York City Housing Authority</i></u> , 193 AD3d 1 (2nd Dept 2021)	1, 8

REPLY ARGUMENT

I

Defendant-Respondent Mischaracterizes Price v. New York City Housing Authority and Scurry v. New York City Housing Authority

The defendant-respondent erroneously argues that this Court’s decision in Price v. New York City Housing Authority, 92 NY2d 553 (1998) supports the granting of summary judgment against plaintiff-appellant Holston. To the contrary, in Price, the issues of negligence and proximate cause were properly allowed to go to the jury. There was no holding that these issues should have been decided by the Court.

Similarly, on pages 27 and 29 of its brief, the defendant-respondent erroneously argues that Second Department in Scurry v. New York City Housing Authority, 193 AD3d 1 (2nd Dept 2021) “would hold a landlord liable even where minimal security measures would not have deterred the assailant...” and “impose strict liability upon property owners.” To the contrary, the Scurry Court held that these issues of negligence and proximate cause should merely be decided by a jury – just as they were in Price.

II Defendant-Respondent Continues to Mischaracterize the Record.

Throughout its brief and in its underlying moving papers, the defendant-respondent mischaracterizes the record.

Justice Kalish repudiated defendant-respondent's false claim, made still now on page 9 of its brief, that the teenagers "taunted" the convicted killers after fleeing into the lobby of the Housing Authority building in question. In fact, the Justice correctly pointed out on the record that the surveillance video does not show that, and in any event, that the video speaks for itself. R 18, line 24 – R 19, line 9.

Furthermore, it was not established that Tayshana Murphy was a member of Three Stacks, notwithstanding defendant-respondent's claim that she was "affiliated with Three Stacks" (defendant-respondent's brief, p.4). 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 convicted killers. At most, she was present when other youths chased or otherwise had altercations with Robert Cartagena, and it was not even established 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 believed she was a close friend of those he had an altercation with, is a jury question.

Finally, defendant-respondent, without basis in the record, claims on page 18 of its brief to the First Department, that the decedent participated in "tormenting" the defendant-killer Cartagena.

III
**Defendant-Respondent did Not Establish that the Killers Targeted
Tayshana Well Before the Shooting, and did Not Establish
that "Reasonable Security Measures" would
Not Have Prevented her Murder.**

The defendant-respondent, the movant in its summary judgment motion, failed to establish that the defendant-killers decided to kill Tayshana (as opposed to a random individual within the group of six) 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 incident and other incidents with the defendant-killer Robert Cartagena, not Tayshana. There is no evidence that she was specifically "targeted" until she was cornered in the stairwell and a decision was made to pull the trigger. If this defines her as being "targeted," it means that every random victim is "targeted" once a gun is pointed at them.

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 on page 8 of its brief to Appellate Division, as well as in its underlying moving papers: "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, 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 – in the best case scenario for the underlying motion’s movant, a random target within a group of six youths.

The video evidence documents that the minimal security measure of a functioning door lock would have prevented the killers from entering the building when they did. The videos show that the killers first attempted to enter the building through the main exit door, but it was properly locked. Having no crowbar or other burglar tools with them, they left that door and tried the next door – the non-working exit-only door. Had that been locked too, the entire timeline would have changed, allowing time for Tayshana to make it to the safety of her apartment. The defendant-respondent failed to establish that, had the broken self-locking door functioned properly, 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 as opposed to killing another random Grant Houses resident. Or as opposed to ending up in jail on another charge. Or as opposed to giving up on the idea entirely). These killers were far removed from a Cold War plan to kill a dissident with a poisoned umbrella point, or Mossad agents targeting a terrorist. If it is to be recognized by this Court at all, the applicability of the targeted victim defense should be one decided by a jury.

IV
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 it has not been proven 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. It has not been proven whether Tayshana was even considered a possible target beforehand, or whether the killers just happened to come upon her and decided then and there to 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. R 1088, 1096. 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, this Court should reverse the holding of the First Department, and deny defendant-respondent's motion for summary judgment.

If this Court chooses to apply the targeted victim defense in this case at all, it should adopt the Second Department's rationale in Scurry, and allow the issue to be decided by a jury.

The First Department 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 First Department erred in applying the targeted victim defense when it was not established by movant that "reasonable security measures" – a working lock – would have prevented the attack on the decedent.

The underlying 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.

WHEREFORE, it is respectfully requested that the April 13th, 2021 Order of the Appellate Division, First Department, be reversed, that summary judgment on behalf of the defendant New York City Housing Authority be denied, and that this Court grant such other and relief as may be just and proper.

Dated: New York, New York
November 21, 2022

Respectfully Submitted,



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Affidavit of Service by Overnight Carrier

The Estate of TAYSHANA MURPHY, by its administratrix, TEPHANIE HOLSTON v. THE NEW YORK STATE HOUSING AUTHORITY -and- TYSHAWN BROCKINGTON, ROBERT CARTAGENA, and CLC COMMUNICATIONS INC. and THE NEW YORK CITY HOUSING AUTHORITY v. TERIQUE COLLINS

020-1722

State of New York }
County of Kings }

Jonathan Didia, being duly sworn, deposes and says that he is over the age of 18 years of age, is not a party to the action and is employed by Dick Bailey Service, Inc. That in the above case on Tuesday, November 29, 2022 deponent served 3 copies of the within

Brief Record [] Appendix [] Notice [] Other [] _____

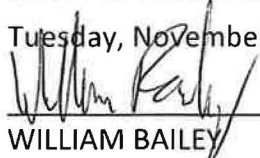
upon

Wilson Elser Moskowitz Edelman & Dicker, 150 East 42nd Street, New York, New York 10017

by dispatching the paper to the person(s) by overnight delivery service at the address(es) designated by the person(s) for that purpose, pursuant to CPLR 2103(b)(6).


Jonathan Didia

Sworn to before me
Tuesday, November 29, 2022


WILLIAM BAILEY

Notary Public, State of New York
No. 01BA6311581
Qualified in Richmond County
Commission Expires Sept. 15, 2026

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