State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 36 Scurry v New York City Housing Authority
No. 37 Estate of Murphy v New York City Housing Authority

The primary issue in these negligent security cases is whether the New York City Housing Authority (NYCHA) is liable for the deaths of residents of two of its buildings who were murdered by intruders who entered through doors with broken locks. NYCHA argued it was not liable because the murders were the result of "targeted" attacks that could not have been prevented by secure doorlocks. The Appellate Division issued conflicting decisions.

Bridget Crushshon was killed by her former boyfriend, Walter Boney, in the hall outside her Brooklyn apartment in 2007. Boney had been stalking and threatening her for a year before he choked Crushshon in the hallway and doused her and himself with a flammable liquid. When Bryan Scurry, one of her sons, pushed Boney off of her, Boney ignited the liquid and set them all on fire. Crushshon and Boney died of their injuries and Scurry was hospitalized for 15 months. Crushshon's estate and Scurry brought this negligence action against NYCHA, claiming Boney was able to enter the building through a door with a lock that had been broken for months. Supreme Court denied NYCHA's summary judgment motion to dismiss the suit, saying the facts "do not preclude the reasonable possibility that the often broken front door" was a proximate cause of the injuries.

The Appellate Division, Second Department affirmed, saying "the alleged longstanding nonoperability of a front door lock ... made it foreseeable that some form of criminal conduct could occur.... NYCHA failed to meet its prima facie burden to proffer any evidence that its alleged negligent maintenance of the door lock did not concurrently contribute to the execution of Boney's crime." It said the First Department had adopted a rule "that targeted attacks," as opposed to opportunistic crimes against random victims, "break the proximate causal link between the reasonableness of security measures by the property owner and the targeted crime itself. We respectfully disagree and hold ... that ... the issue of proximate causality may present a triable issue of fact" that a jury must decide.

In 2011, Tayshana Murphy was shot to death inside her NYCHA building in Manhattan by two gang members seeking revenge after a series of altercations with a rival gang, to which Murphy's brother and close friends belonged. She had been involved with several gang members in an assault on one of the gunmen hours earlier and was standing with them outside her building when the gunmen approached. Murphy's group fled inside through a side door with a broken lock and the gunmen followed. They shot Murphy three times after her group scattered. Her estate brought this action against NYCHA, claiming its negligent failure to maintain the doorlock was a proximate cause of her murder. Supreme Court dismissed the suit on summary judgment.

The Appellate Division, First Department affirmed. The gunmen "were intent on gaining access to the building" and "were bent on revenge," it said, and "considering that at least one other person ... entered the building at the same time, it does not take a leap of the imagination to surmise that [the gunmen] would have gained access to the building by following another person in or forcing such a person to let them in. This negates the unlocked door as a proximate cause of the harm that befell Murphy, and makes her assailants' murderous intent the only proximate cause." Responding to Scurry, it said "we are aware of no case in the First Department that suggests that a landowner would avoid liability even if minimal precautions would have actually prevented a determined assailant from gaining access. In reality, however, that is hardly ever the case."

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State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 38 People v Michael Saenger

Michael Saenger violated a stay-away order of protection in May 2016 by breaking into his former girlfriend's home in Queens and confronting her in her upstairs bedroom. When he placed his hands on her neck, she pepper sprayed him in the face and he fled, taking two of her identification cards with him. Police officers arrested him a short distance away, still teary-eyed and stumbling from the effects of the pepper spray. They found the ID cards in his wallet. Saenger was indicted on charges that included burglary, first and second-degree criminal contempt and, under Penal Law § 240.75, aggravated family offense.

Penal Law §240.75 provides, in part, that a defendant "is guilty of aggravated family offense when he or she commits a misdemeanor defined in subdivision two of this section as a specified offense and he or she has been convicted of one or more specified offenses within the immediately preceding five years." Second-degree criminal contempt is a "specified offense" listed in subdivision two and the prosecutor filed a special information stating that Saenger had been convicted of that crime in March 2015, satisfying the previous conviction requirement of the statute. Count six of the current indictment, which charged Saenger with aggravated family offense, did not identify which "specified offense" he had allegedly committed to support the charge, but simply said he "committed an offense specified in subdivision two of Section 240.75 of the Penal Law...." Count five of the indictment charged him with second-degree criminal contempt, but made no reference to count six.

Saenger did not challenge the jurisdictional validity of the indictment before trial. He was convicted of aggravated family offense and both contempt counts, and was sentenced to two to four years in prison. He argued on appeal that the indictment was jurisdictionally defective because it did not inform him of which "specified offense" supported the aggravated family offense count.

The Appellate Division, Second Department, vacated the second-degree contempt conviction as a lesser included offense and otherwise affirmed. It rejected his claim that the indictment was defective as "unpreserved for appellate review."

Saenger argues that, because the second-degree contempt charge "is clearly an essential element" of the crime of aggravated family offense, "an indictment's failure to specify any particular statute" or otherwise identify the misdemeanor underlying the more serious crime "is a jurisdictional defect that does not require preservation." He says the indictment "entirely failed to provide [him] with sufficient notice of the specific crime he was being charged with, as further shown by the uncertainty and confusion at the charge conference about what to instruct the jury regarding the 'specified offense,'" and as a result his aggravated family offense conviction should be reversed.

The prosecution argues that, "in charging an Aggravated Family Offense, [it] specifically cited Penal Law section 240.75, the statute defining that offense. This was sufficient, under well-established law, to satisfy the pleading requirements. Moreover, defendant had ample notice of the underlying offense that he was accused of committing. Indeed, only one offense on the indictment qualified under section 240.75(2), and that was Criminal Contempt in the Second Degree."

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State of New York
Court of Appeals

To be argued Wednesday, April 19, 2023

No. 39 Matter of Lynch v City of New York

The Patrolmen's Benevolent Association of the City of New York (PBA) and its president, Patrick Lynch, brought this suit against New York City and its Police Pension Fund (PPF), contending they improperly restricted retirement credit for prior public service by police officers in tier 3 of the retirement system to prior service as a police officer or firefighter. They contended that officers in tier 3, those who joined the NYPD after July 1, 2009, have the same rights as officers in tier 2 to obtain pension credits for prior service with most public employers in New York, whether in uniform or not. The City argued that under Retirement and Social Security Law (RSSL) article 14, which created tier 3, officers in tier 3 must complete at least 22 years of uniformed service as a police officer or firefighter in order to retire with full benefits.

On consideration of summary judgment motions by both sides, Supreme Court ruled largely in favor of the City. It focused on RSSL § 513(c)(2), which states, "A police/fire member shall be eligible to obtain credit for service with a public employer ... only if such service, if rendered prior to [July 1, 1976] by a police/ fire member who was subject to article eleven of [the RSSL], would have been eligible for credit in the police/fire retirement system or plan involved." The court said the effect of the statute was "to create equivalence between Tier 2 and Tier 3" for obtaining prior service credit, "but frozen in time so that Tier 3 members receive the same creditable service benefits as Tier 2 members [did] in 1976," when only police and fire service counted toward retirement eligibility.

The Appellate Division, First Department modified the order and granted summary judgment to the PBA on its statutory claims. "Article 14 of the [RSSL] establishes tier 3 employment but does not exclusively govern every right and benefit enjoyed by all tier 3 members," it said, citing Lynch v City of New York (35 NY3d 517 [2020]). It said RSSL § 513(c)(1) "provides eligibility requirements to obtain credit for service for prior service in defined public employment in the same terms as those enjoyed by tier 2 employees pursuant to [RSSL] § 446(c)." And it concluded that RSSL § 513(c)(2) "does not conflict" with the pension credit transfer, buy-back, and purchase statutes relied on by the PBA.

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