

Court Finds that Asking for Help in a Dangerous Situation Creates a Duty of Care

The Appellate Division has reversed a trial court's dismissal of a lawsuit arising out of an individual who was fatally shot while investigating a robbery. In this case, Cosme Novaly, a friend and neighbor of defendant Jean Robert Vertus, was shot in front of Vertus Financial Services by a robber leaving the premises. Vertus operated his business in Irvington which he noted that "in Irvington you have to be scared for your life." Additionally, three-year before the shooting of Novaly, Vertus had been robbed and stabbed while walking to work.

On the date of the incident, Vertus had finished doing business with his client, Naitil Desir. As Desir began to walk downstairs to exit the building, Vertus saw her step back. Vertus "knew something was wrong" and left by a side door. He initially went to a downstairs neighbor to call 911. However, no one was home. He then sought help from Novaly and his roommate Mr. St. Louis. Vertus was friendly with Novaly and considered him "like family." Vertus told Novaly that "something" was going on, but did not ask him to call 911. Novaly called Vertus' office, by the line was busy. Accordingly, Novaly and St. Louis left Vertus in their apartment and went to see what was happening at the office. Vertus did not tell Novaly that he thought that there may be a robbery in progress, but did tell them that he saw his client act like something was going on.

While in the apartment, Vertus heard a gunshot and dialed 911. When he heard the police sirens, Vertus left the apartment and walked towards his business where he saw Novaly lying on his back suffering from a gunshot wound. Novaly died twenty-four days later. The parties to the lawsuit agreed that three robbers entered the business, assaulted several clients, shot Desir (who subsequently died), demanded money and shot Novaly on the sidewalk outside the business.

Novaly's estate then filed a lawsuit against Vertus and his business. The estate argued that Vertus owed a duty to Novaly as despite thinking he was being robbed, he asked Novaly to lend assistance knowing that asking for assistance exposed Novaly to risk of injury. Initially, the trial court dismissed Novaly's claim finding that Vertus owed no duty of care to Novaly. On Appeal, the Appellate Division reversed finding that "we hold that one who has reason to believe that an intruder on his premises poses a danger to others owes a duty of reasonable care to a friend whom he brings to the danger by a request for assistance."

The Court noted that "the facts in this case support the imposition of a duty of reasonable care based on Vertus' conduct that he knew or should have known would bring Novaly to the danger that caused his injury and death." Further, the court held that "because of Vertus' affirmative conduct, there is nothing unfair about imposing a duty of reasonable care toward an untrained and unsuspecting neighbor nor is it contrary to the purpose of determining conduct that exposes other to an unreasonable risk of bodily injury."

Interestingly, Desir also filed suit against Vertus and his company. However, that matter was tried to a jury who rejected Desir's claim and returned a verdict for Vertus and his company.