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## Prosecution of innocents

I came across an interesting case last week, *People v. Rios*, 26 Misc.3d 1225(A), 2010 WL 625221 (N.Y. Sup. Ct. 2010), while conducting research for this year's annual supplement for the Thomson West book I co-authored with Judge Karen Morris, *Criminal Law in New York*.

The case was based on a criminal prosecution that involved an unusual set of facts and prosecutorial overreaching that could have been the basis of a "Law & Order" episode. People had died, gosh darn it, and someone was going to pay with their freedom — lack of criminal liability notwithstanding.

In this unfortunate case, which never should have been prosecuted in the first instance, a jury convicted the defendants — a building owner and manager — of the charges of criminally negligent homicide and second-degree reckless endangerment.

The victims were firefighters who died while responding to a fire in an apartment building owned and managed by the defendants. While fighting the fire, six firefighters became trapped on the fourth floor. Ultimately they jumped from a window on the fourth floor as an attempt to escape the fire. Tragically, two firefighters died, while the other four were severely injured.

A subsequent investigation revealed the lessee of the apartment from which the firefighters jumped had installed illegal partitions that blocked some fire escapes and impeded the firefighters' ability to predict the fire's strength, and to navigate within the apartment to escape. It also was determined that another lessee's modifications in an apartment on the third floor — which included installation of an illegal partition and a jury rigged electrical system created in order to heat the room created by the partition — caused the fire in the first instance.

The defendants were prosecuted on the theory that they "recklessly tolerated the hazardous conditions that were created by the tenants and that caused the deaths of the fire-fighters."

One issue raised on appeal concerned whether the court should grant the defendants' motion to set aside the verdict on the grounds that the evidence was legally insufficient to establish that the defendants knew of the conditions that caused the firefighters' deaths. A second issue raised, which I plan to address in another column, concerned whether juror misconduct

occurred when a juror sent a Facebook "friend" request to a firefighter witness while the trial was pending.

Ultimately, after an extensive analysis of the facts, the trial court granted the defendants' motion to set aside the verdict on the ground that the evidence did not support the prosecution's theory that the defendants had actual knowledge of the conditions in the fires that resulted in the deaths.

The court noted that no electrical or building violation codes ever were issued for the building where the fire occurred, and that the prosecution relied solely on circumstantial evidence to establish that the defendants had actual knowledge of the conditions at issue.

In fact, that was what I found most striking about the case — the apparent house of cards on which the prosecution relied as its case in chief. The court described the prosecution's utter lack of evidence as follows: "The inferences argued by the People ... were neither reasonable nor logical, and called for the jurors to engage in speculation and conjecture. ... These inferences upon inferences were not circumstantial evidence upon which the jury could properly have inferred guilt."

Inferences upon inferences never should be the foundation of a criminal prosecution. In the face of pointless and tragic deaths, many seasoned prosecutors seek to place blame and lose sight of the fact that civil liability does not necessarily amount to criminal liability.

Tenuous prosecutions such as this — while great fodder for a prime time television show — are shameful when real people's lives are at stake. Convicting people innocent of a crime does not bring back the dead. It only serves to contort our criminal justice system into an unrecognizable beast, driven by vengeance rather than justice.

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