

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2001

| | | |
|--------------------|----|-----------------------|
| EDUARDO PRIETO, | ** | |
| Appellant, | ** | CASE NO. 3D01-1274 |
| vs. | ** | LOWER |
| MIAMI-DADE COUNTY, | ** | TRIBUNAL NO. 98-14161 |
| Appellee. | ** | |

Opinion filed November 21, 2001.

An Appeal from the Circuit Court for Dade County, Alan Postman,
Judge.

Jose M. Francisco; Bambi G. Blum; and Stokes & Gonzalez, for
appellant.

Michael H. Lax, for appellee.

Before JORGENSON, GREEN, and RAMIREZ, JJ.

PER CURIAM.

Eduardo Prieto, the plaintiff below, appeals from a final judgment
entered in favor of defendant Miami-Dade County. We affirm.

Prieto sued defendants Miami-Dade County, Alanis Security, and The Wackenhut Corporation for negligence; his claim arose from an assault he suffered at a Metrorail station. There is no evidence in the record of prior similar incidents at that station.¹

The trial court properly entered final summary judgment for defendant Miami-Dade County on the grounds that the attack was not foreseeable.² In the absence of any record evidence that the County had actual or constructive notice of similar criminal activity at that station, the County cannot be held liable as a matter of law for the incident. See Metropolitan Dade County v. Ivanov, 689 So. 2d 1267 (Fla. 3d DCA 1997); Ameijeiras v. Metropolitan Dade County, 534 So. 2d 812 (Fla. 3d DCA 1988).

We do not reach the issue of sovereign immunity, as the issue of duty is dispositive. See Metropolitan Dade County v. Dubon, 780 So. 2d 328, 330 n.2 (Fla. 3d DCA 2001).

AFFIRMED.

¹ Prieto knew his assailants, as they had attacked him before at different locations. Prieto had not reported the attacks.

² The claims against the other defendants remain pending.