

Justice for Rekia!



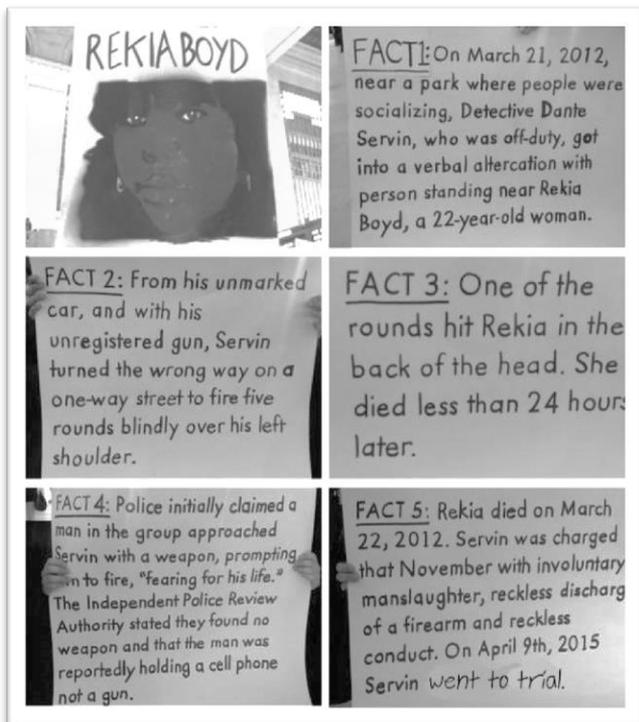
The Dante Servin Trial:

**Analysis of Judge Porter's verdict
Regarding the murder of Rekia Boyd
by CPD Officer Dante Servin.**

The Dante Servin Trial: An Analysis of the Verdict

On Monday, April 20th, Dante Servin was acquitted of killing Rekia Boyd when a judge granted his defense attorney's motion for a directed verdict. Servin was never even required to present his defense. This is a very rare move, and it's hard to understand why this happened. This pamphlet is a reprint of a guest blog post which originally appeared on the website www.USPrisonCulture.com. This has been re-printed with permission. The blog owner wrote:

"An attorney friend of mine was kind enough to break down the Dante Servin acquittal for me. I am a lay person and not a lawyer. If you are like me, you were likely confused about all of the information that has been circulating regarding this case. My friend has generously agreed to allow me to post these thoughts anonymously. This helped me better understand the issues in this acquittal. I hope it helps others."



Issue #1: Judge Porter's decision to grant the directed verdict is shocking and rare

Judge Porter granted the defendant's motion for directed verdict at the conclusion of the State's case. This means that after the State closed their case, before the defense put on their case, the defendant asked the judge to find that the State's case was so weak that the case should not move forward. When ruling on a defendant's motion for directed verdict, the judge must look at the facts presented in the State's case in the light most favorable to the State, assuming inferences in the light most favorable to the State, and then determine that a reasonable person could not find that the State could prove their case beyond a reasonable doubt. See People v. McCord, 46 Ill.App.3d 389, 392 (1977). It's a very high standard and motions for a directed verdict are almost never granted. If a judge grants a directed verdict, the defense doesn't even need to put forth their own evidence to challenge the State's case. The judge evaluates the case on the State's facts only, in the light most favorable to the State, and then finds that it's impossible for the State to succeed. In a case involving the shooting death of a young female, it's shocking that the judge granted the defendant's motion for directed verdict, acquitting Servin of all charges. The result was that Officer Servin did not

have to testify and prosecutors were never able to cross-examine him. This is unsettling both because the judge prevented the prosecution from supporting their case in cross-examination of the defense witnesses, and because he failed to provide the emotional benefit to the family of having Officer Servin explain his actions on the stand.

Issue #2: Judge Porter's Legal Reasoning is Questionable

Judge Porter granted the defense's motion for a directed verdict based on Illinois law that supports a bizarre outcome. Even though this bizarre legal support exists, the judge had other options to support a different ruling. I'll first explain his ruling, then explore the other options.

The judge accurately noted that all of the charges the State brought against Servin required the State to prove Servin acted recklessly. The judge then found that the State only introduced evidence that Dante Servin acted intentionally (not recklessly). As a result, the judge ruled as a matter of law that the State could not succeed in their case because Servin acted intentionally, not recklessly. The logic of this ruling is based on a technical matter of law; if someone intentionally shoots someone, they did not act recklessly, and vice versa (if they shot recklessly, they didn't do so intentionally). There is support for saying this is the law in Illinois. See People vs. Sipp, 378 Ill.App.3d

157 (2007). The bizarre outcome of the application of this law in this context is that a defendant (like Servin) could assert first degree murder as a defense to any charges regarding reckless behavior (freely admitting that he intentionally killed Rekia Boyd) and then be acquitted of all charges (more serious murder charges would then be prevented under double jeopardy). This is obviously a bizarre outcome, particularly when considering that the law has long found that intentional conduct is more culpable than reckless conduct (intentionally killing someone versus accidentally doing so because of reckless conduct).

Although Judge Porter's opinion is written to make it look like his hands were tied by the above law, the judge had several other options to deny the defendant's motion for directed verdict. First, the judge could have done what all lawyers are trained to do: instead of rely on the cases that he relied on in his ruling, he could have distinguished those cases from the present case in front of him (if the judge wanted to find a hook, they are distinguishable). For example, the *legal* issue in front of him was a directed verdict, whereas the cases cited in his ruling dealt with jury instructions. Those are different legal issues and he could have distinguished those cases on that ground. Similarly, the judge could have ruled that as a matter of law, if the defendant's self-defense

claim turned out to be unreasonable, “unreasonable self-defense” equates to reckless conduct. In addition, the facts in the cases cited in his ruling are different than the facts in the Servin case. For example, in the *Sipp* case, the defendant shot and killed his intended target, whereas Servin shot and killed an unintended victim. The defendant in *Sipp* also looked at the intended target as he shot him, whereas Servin shot over his shoulder and behind him while driving away. He could have distinguished this case on that ground. These are hooks that judges often use to distinguish prior cases from the present case to rule that those cases do not apply to the present case. In the end, all he needed was something to say that a reasonable person could support reckless charges based on the facts of this unique case.

Another, and arguably even better option, would be to rely on the Model Penal Code. The Model Penal Code written by the American Law Institute has been adopted largely in most states. It is an authority on criminal law, even though not fully adopted in all states. In the Model Penal Code, legal experts have defined various states of mind in a hierarchical manner such that the lesser state of mind is included in the higher state of mind. For example, the Model Penal Code supports the idea that if the State can prove intentional conduct, then a lower state of mind would be included in that. Here, that would mean

that if the State put forth evidence of intentional conduct, then the lesser state of recklessness would be included as a lesser and included state of mind. The logic of the Model Penal Code is based on the idea that all intentional acts are reckless towards the life of a victim. Illinois has adopted definitions of intentionality and recklessness relying on the Model Penal Code, but Judge Porter relied on the case law in Illinois instead of the Model Penal Code. The Model Penal Code makes the bizarre (and absurd) result that occurred in Servin's case impossible.

Issue #3: The State's Attorney's delay in Indictment and charging decisions are Problematic

The State's delay in securing an indictment a year and 8 months after the shooting reeks of all the State's Attorney's offices around the country that are protecting cops, instead of prosecuting them, even when the cop is the defendant. This is an obvious conflict of interest as police are their investigators and the people they work with daily. There is a tight bond between the State and the police, and that is not debatable.

Equally troubling is the decision on what to charge to indict. The decision not to charge Servin with first degree murder, which would also preserve the option of a 2d degree murder conviction is very questionable. The State could have, and ordinarily does, charge defendants with everything. Ordinarily, the State would indict on 1st degree (preserving 2d degree), and include involuntary manslaughter and reckless charges as lesser and included offenses. This would have allowed them to make a decision on the day of trial to proceed on the counts they believed were most likely to succeed.

The reason it's so important to indict on first degree murder in this case is because it is readily foreseeable that the defense would claim self-defense. Even if a jury or judge believed the officer truly believed he needed to use lethal force in self-defense, the State would be able to argue that the actions taken were unreasonable and secure a 2d degree murder charge (if not succeed on first degree). Without the indictment for 1st degree, they cannot argue "unreasonable self-defense" at trial for a possible lesser included second degree murder. By charging only reckless counts, these options were excluded from the beginning. **That was either intentional or serious oversight in legal analysis.**

It is possible given the bizarre state of Illinois law that the state's attorney's office knew that this absurd result could occur if they charged Servin only with involuntary manslaughter. That is, it's possible the state's attorney knew that charging involuntary manslaughter, given the law in Illinois, was an impossible case to prove so long as they argued that Servin acted intentionally, and that they could thus force the judge to dismiss the case. This analysis makes sense given how long it took State's Attorneys to indict Servin (1 year, 8 months) suggesting that they were hesitant to charge him at all. **In addition, the state's attorney's office's generally close relationship with cops makes it possible that the State's Attorney's office planned this result from the beginning. If this is true, then the state was essentially in cahoots with the defense, leaving no one looking out for the interests of the public or for the interests of Rekia Boyd's family.**

In the state's attorney's defense, it is also possible that they went forward on involuntary manslaughter instead of first degree murder because they were afraid they couldn't win a first degree murder charge against an off-duty cop (given that we know juries and judges generally believe officers when they say they acted in self-defense, even if turned out they were wrong). For example, the State's Attorneys in the Zimmerman case were criticized for bringing 1st degree murder charges because they

could have more easily proved reckless conduct. Here, it's the reverse. It can be difficult to determine which trial strategy will ultimately pay off, and the state's attorney's office may have been worried that, like George Zimmerman, Servin would be acquitted because the judge or jury would not have believed he acted intentionally, but only recklessly. It's also possible the state's attorney's office simply missed the legal point regarding the mutually exclusive nature of intentionality and recklessness in Illinois, and expected that the judge would convict on the lesser charge.

Issue #4: How the Police Department Responded

By far the most egregious response to this ruling has been from the Chicago Police Department. Even if we assume that Servin actually shouldn't have been found guilty of any criminal conduct, we might hope that he would at least face internal discipline for an extraordinary lack of judgement that ended in the death of a young woman. Instead, his statement to the press was without remorse or apology. In addition, Gary McCarthy, the superintendent of police, asserted in a public statement that he should have never even been charged, truly suggesting that he believes that when cops, even off duty cops, kill people, no matter what the circumstances, they are above the

law. This is particularly troubling in this case when the off-duty officer was not responding to a citizen complaint or 911 call, and was confronting this young group for being loud/noisy, which is not criminal and not grounds for stopping someone.

This result is truly a smack in the face to Rekia Boyd's family and to all Chicagoans who hope that their police are there to protect them, not endanger their lives.

Resources:

We Charge Genocide

www.WeChargeGenocide.org

Black Lives Matter Chicago

www.BlackLivesMatterChicago.com

Black Youth Project 100 (BYP100)

www.byp100.org

People's Law Office

www.peopleslawoffice.com

Uptown People's Law Center

<http://uplcchicago.org/>

National Lawyers Guild Chicago

www.nlgchicago.org



We DO THIS FOR REKIA!

Cover Drawing by TrinidadEscobar.