

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff)	
)	Motion For Directed Verdict
)	
v.)	14 CR 1710
)	
DANTE SERVIN,)	Honorable Dennis J. Porter
)	Presiding Judge
)	
Defendant)	

ORDER

Defendant, Dante Servin, has moved for a finding of not guilty at the close of the State's case-in-chief. The issue the court must now decide is whether the State has presented sufficient evidence, taking the evidence in the light most favorable to the State, to permit a reasonable person to find each and every element of the offenses charged beyond a reasonable doubt.

BACKGROUND

The evidence in this case has shown that on March 21, 2012, the defendant, Dante Servin shot and killed Rekia Boyd. Rekia Boyd died as a result of a gunshot wound to the head. The defendant was charged in a four count indictment with the offenses of involuntary manslaughter (count one) and reckless discharge of a firearm (counts two, three, and four) on January 30, 2014. Defendant's trial began on April 9, 2015, and the State rested its case-in-chief on April 16, 2015. The defense has made a motion for a directed finding of acquittal on all counts. This motion was argued that same day. The court has taken the motion under advisement and has continued the case to April 20, 2015 for ruling.

THE LAW

The State contends that the defendant unintentionally shot and killed Rekia Boyd without lawful justification when he recklessly discharged a firearm in her direction thereby consciously disregarding a substantial and unjustifiable risk that injury would result. The defense has countered that defendant's actions were done in self-defense and were, therefore, justifiable. An understanding of the relationship between the offenses of murder and involuntary manslaughter is helpful to the resolution of the issues in this case.

I. FIRST DEGREE MURDER

In Illinois, almost all crimes require either a guilty act (or series of acts) and a culpable mental state.¹ This has been a part of our jurisprudence dating back to English common law. For example, if the defendant were charged with first degree murder, it would be incumbent upon the State to prove beyond a reasonable doubt the following:

First Proposition: that Dante Servin performed the acts which caused the death of Rekia Boyd; and

Second Proposition: that at the time he performed those acts, he

[1] intended to kill that individual or another; or

[2] knew such acts would cause death to that individual or another; or

[3] knew such acts created a strong probability of great bodily harm to that individual or another.

It will be seen that the First Proposition defines the criminal act and the Second Proposition defines the mental state of the defendant which the State must prove (any one of the three) to convict the defendant of first degree murder. In this case, the evidence is virtually uncontroverted and the State has proven the above elements beyond a reasonable doubt. It is not contested that the defendant fired the shots which killed Rekia Boyd. Likewise, it is beyond question that the defendant fired the shots intending to kill, or knew his acts would cause death,

¹ There are a few offenses which are "strict liability" in that they require no mental state but they are not relevant here.

or knew his acts created a strong probability of death or great bodily harm to Antonio Cross.² He fired five times and the last three, he "had him in his sights".

Now, in this case, the defense has raised the defense of self-defense. Therefore, to prove the defendant guilty of first degree murder in this case, the State would also have to prove beyond a reasonable doubt a third proposition:

Third Proposition: the defendant was not justified in using the force that he used.

Since the force the defendant used was intended to or likely to cause death or great bodily harm, the State would have to prove in this case that the defendant did not reasonably believe that such force was necessary to prevent imminent death or great bodily harm to him.

If the defendant had been charged with first degree murder and the State were able to prove these three propositions the defendant would be guilty of first degree murder. The defendant contends that he was placed in fear of imminent death or great bodily harm by the actions of Antonio Cross and that this belief was entirely reasonable. Thus far, the defense has attempted to show that the defendant was reasonably fearful of imminent death or great bodily harm by the statements of the defendant made to the detective at the scene and later to ASA Maria Burnett. The defense has impeached the two eyewitnesses, Isha Beamon and Antonio Cross, on several issues which relate directly to the events immediately preceding the shooting. From this, they argue this court should find the defendant's shooting at Antonio Cross to be both reasonable and necessary. If the defendant were charged with first degree murder and if they prevail on this issue, then defendant is not guilty of anything.

² It is of no legal consequence in this case that the defendant did not intend to harm Rekia Boyd. The criminal intent, if any there be, is transferred to the deceased. This is sometimes called the doctrine of "transferred intent".

II. SECOND DEGREE MURDER

There would be yet another possibility for the outcome of this case if the defendant were charged with first degree murder. If the defendant could show by a preponderance of the evidence a mitigating factor existed, i.e. he believed he was justified in using the force which he used but this belief was found to be objectively unreasonable, he would be guilty of second degree murder only, and not first degree murder. This is sometimes referred to as imperfect self-defense.

III. INVOLUNTARY MANSLAUGHTER

This brings us to the actual charges against the defendant. A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual and he performs them recklessly...720 ILCS 5/9-3(a) (West 2014).

Recklessness is defined as:

A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. An act that is performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.
720 ILCS 5/4-6 (West 2014).

There are, therefore, four elements to involuntary manslaughter: (1) the defendant must have done an act, which unintentionally (2) caused the death of another and (3) the act, which was such as was likely to cause death or great bodily harm, was (4) performed recklessly. *People v. Smith*, 149 Ill. 2d 558 (1992). It is recklessness, not any other fact underlying an

inference of this mental state, which the State must prove beyond a reasonable doubt. *Smith*, 149 Ill. 2d at 569.

"The basic difference between involuntary manslaughter and first degree murder is the mental state that accompanies the conduct resulting in the victim's death." *People v. Daniels*, 301 Ill. App. 3d 87, 95 (1998). For first degree murder, the defendant knows his acts "create a strong probability of death or great bodily harm." 720 ILCS 5/9-1(a)(2)(West 2000). To step down to involuntary manslaughter the defendant performs acts "likely to cause death or great bodily harm" and he performs those acts "recklessly." 720 ILCS 5/9-3(a) (West 2000). "Reckless conduct generally involves a lesser degree of risk than conduct that creates a strong probability of death or great bodily harm." *People v. DiVincenzo*, 183 Ill. 2d 239, 250 (1998).

It should be readily apparent, without further discussion, that the first three elements of involuntary manslaughter have been proven in this case. In fact, they are not seriously contested. Therefore, the remainder of this order will be concerned with element four, recklessness.

ANALYSIS

It is easy to say, "Of course the defendant was reckless. He intentionally shot in the direction of a group of people on the sidewalk. That is really dangerous. People could be hurt or killed and in fact Rekia Boyd was killed. Case closed." It is easy to think that way, but it is wrong. It ignores the law on this subject.

Illinois courts have consistently held that when the defendant intends to fire a gun, points it in the general direction of his or her intended victim, and shoots, such conduct is not merely reckless and does not warrant an involuntary-manslaughter instruction, regardless of the defendant's assertion that he or she did not intend to kill anyone. *People v. Eason*, 326 Ill. App. 3d 197, 210 (2001); *People v. Jackson*, 372 Ill. App. 3d 605, 613-14 (2007) citing *Eason*; *People v. Sipp*, 378 Ill. App. 3d 157 (2008) citing *Jackson*. This is the recognition by the law that the

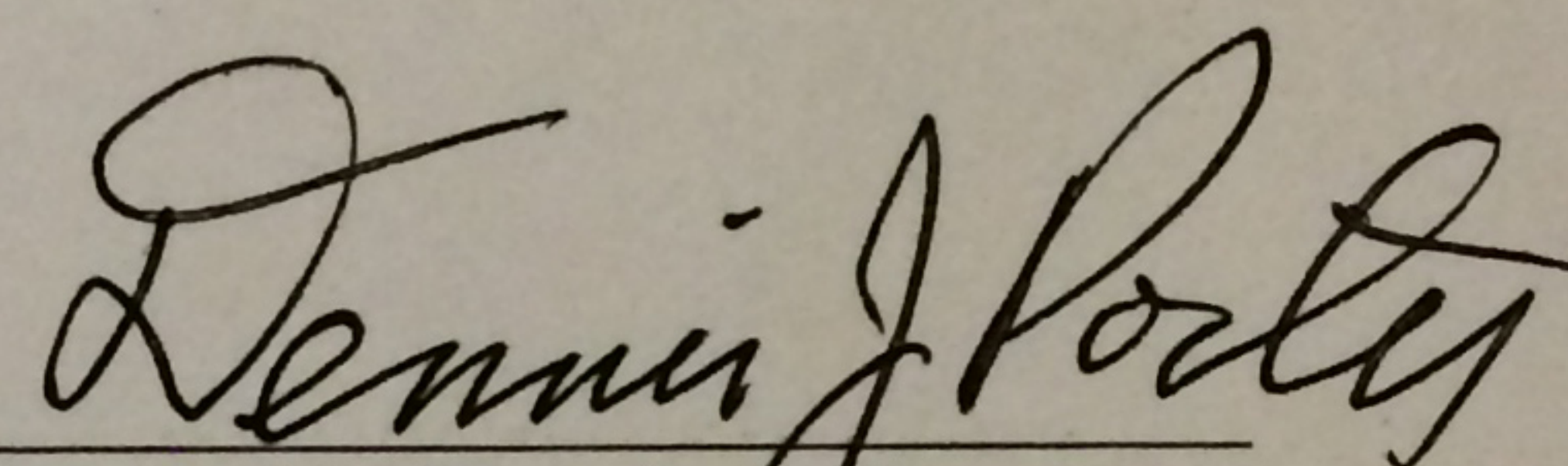
act of intentionally firing a gun at some person or persons on the street is an act that is so dangerous it is beyond reckless; it is intentional and the crime, if any there be, is first degree murder. In *Jackson, Eason, and Sipp*, the issue before the Appellate Court was whether the trial court was in error for refusing to even instruct the jury on involuntary manslaughter. In each case, the Court held there was no error. The threshold at which an instruction should be given to the jury is very low. There must be some credible evidence to justify the giving of the instruction. *People v. Jones*, 219 Ill. 2d 1 (2006). In each of these cases, the Court found there was no evidence to support the instruction. These cases control the result here. There is no evidence of recklessness that has been presented to this court as a matter of law.

CONCLUSION

As previously indicated, both sides have spent a great deal of time and effort in attempting to show the defendant's actions on the date in question either were, or were not, justified. It may be that both sides would benefit from some closure on this question. It is, perhaps, even unfortunate that the unusual posture of this case prevents this court from reaching that issue. This court must follow the law. It must apply that law to the evidence submitted to the court on the charges on which the defendant was indicted on January 30, 2014. It is axiomatic that a defendant cannot be convicted of a greater offense than that with which he is charged. The absence of any evidence of reckless conduct renders it unnecessary for this court to consider whether the defendant was justified in his actions. Indeed, it would be improper to permit the trial to continue given the total failure of proof on the issue of recklessness. Simply

put, the evidence presented in this case does not support the charges on which the defendant was indicted and tried.³

There being no evidence of recklessness as a matter of law, there is no evidence upon which the State could sustain its burden of proof as to the fourth element of the charge of involuntary manslaughter. Therefore, the Motion For a Directed Finding is granted. There is a finding of not guilty on all counts and the defendant is discharged.

ENTERED: 
Honorable Dennis J. Porter
Circuit Court of Cook County
Criminal Division

DATED: April 20, 2015

ENTERED
JUDGE DENNIS PORTER - 1512
APR 20 2015
DEPUTY CLERK
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

³ The discussion regarding the absence of reckless conduct is equally applicable to count two, three, and four, the reckless discharge charges. In recognition of this situation the legislature has provided two offenses which do cover this situation, attempted murder and aggravated discharge of a firearm.