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Mom testifies as trial starts in Yonkers stray-bullet death of Tarrytown college student

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WHITE PLAINS - Anthony Burton did not know Jessica Santos, or even that she was talking with friends outside a Yonkers grocery store one night last summer. But firing several shots from a moving car, killing the college student from Tarrytown with a stray bullet, was so callous that Burton should be convicted of murder, a prosecutor told the jury today at the opening of Burton's trial.

"(The circumstances) go beyond mere recklessness. It goes to depravity. It goes to utter disregard for human life," Assistant District Attorney Robert Prisco said.

Burton's lawyer acknowledged that the killing Aug. 27 was a tragedy. But he said that Burton's "outrageous, reckless" behavior did not rise to the level of murder, particularly because he was aiming for the grocery's metal sign. Although he did not mention manslaughter, he suggested that is the charge for which Burton should be convicted.

"He will be accountable for taking her life," the lawyer, Barry Warhit, said. "But not every homicide is depraved. Not every killing is murder."

Burton, then 17, was in a car with three other people the night of Aug. 27. As it pulled around the corner of Beech and Poplar streets, Burton fired six shots from a gun he later claimed one of the other occupants handed him.

Santos, 19, was saying goodbye to friends before leaving the next day for her sophomore year at the University of New Haven. She was struck by one of the bullets and died a short time later at St. Joseph's Medical Center.

Her mother, Gisela Marin, was the first witness today, describing how she spent that day with her only child doing the last minute things families do before the trip to college: getting stuff out of storage, doing laundry and packing. Santos' college roommate had called and they spoke excitedly about moving into the new dorm building. Her daughter couldn't wait to get back to school and resume studying for a degree in criminal justice, she said. Santos hoped to become an FBI agent, her mother said.

In the evening, Santos left to say goodbye to friends, as her mother urged her to be home early because they were driving to Connecticut first thing the next morning.

Marin described calling her daughter shortly after 10 p.m. to see where she was. She got her voice mail. When she called 10 minutes later, a police officer told her there had been an incident and Santos was being taken to the hospital.

Marin said she got a ride to Yonkers because she was too frantic to drive herself, and that when she got there, a doctor told her what happened.

"They couldn't save her and my daughter passed away...because somebody took it upon themselves to be so callous and cold," she said. "That was my only child. She didn't deserve to die that way. Nobody's child deserves to die that way."

Marin then identified her daughter's blue 2005 Honda Civic from a crime scene photograph, recognizing the graduation tassel hanging from the rear view mirror and the name of the dealership where she bought the car for Santos. She circled what appeared to be a bullet hole in the windshield, damage she said had not been there when she saw the car earlier that day.

There were many people outside the grocery when Santos was shot and the store was busy with customers. Prisco said those circumstances should have stopped Burton from firing, but did not, hence the depravity. He also hopes the damage to the car windshield, just a few feet from where Santos was gunned down, will offset the bullet hole in the store sign where Burton claimed he was aiming.

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