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Trial starts in Yonkers stray-bullet death of Tarrytown college student

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Anthony Burton wasn't aiming at Jessica Santos. He did not even know the college student from Tarrytown or that she was standing outside a Yonkers grocery talking to friends as he rode by in a car.

But when Burton fired several shots out the window, killing her with a stray bullet, it was an act so callous that he should be convicted of murder, a prosecutor told the jury yesterday as his trial began in Westchester County Court.

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

Barry Warhit, Burton's lawyer, acknowledged that the Aug. 27 killing 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 Warhit did not mention manslaughter, he suggested that is the charge for which Burton should be convicted.

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

Burton, then 17, was in a car with three other people that night. 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 Hospital.

Burton lived a few blocks away but fled to the Bronx. When he was arrested the next day, he initially denied any involvement but eventually admitted to detectives that he was the shooter. On a videotape jurors will see, he cried as he insisted he had not meant to hurt anyone.

Santos' mother, Gisela Marin, was the first witness yesterday, stifling tears as she described how she spent that day with her only child as Santos did laundry and packed. Santos' college roommate called and they spoke excitedly about moving into a new dorm building. Her daughter couldn't wait to get back to school and resume studying for a degree in criminal justice, Marin said. Santos hoped to become an FBI agent someday.

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, she said.

Marin told how she called 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 had happened.

"They couldn't save her and my daughter passed away ... because somebody took it upon themselves to be so callous and cold," Marin 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 said he 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.

Burton faces up to 25 years to life in prison if convicted of second-degree murder or up to 15 years if found guilty of manslaughter. The trial resumes this morning before acting state Supreme Court Justice Robert Neary.