

# **BELL PROSECUTION DOUBTS: LEGAL EXPERTS SAY WITNESS TESTIMONY THUS FAR BOLSTERS COPS' CLAIMS THEY OPENED FIRE IN SELF-DEFENSE**

## **Newsday - Long Island, N.Y.**

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Date: Mar 10, 2008

Section: NEWS

Murray Richman is considered one of the deans of the criminal defense bar in New York City.

With nearly 45 years' experience trying and handling cases, Richman, 70, thought there was strong evidence of guilt against the detectives accused in the Sean Bell shooting - at least until their trial started two weeks ago.

Now, he isn't so sure.

Richman is among a number of defense attorneys contacted by Newsday - none of whom have any connection to the case - who believe that so far the charges against the three cops are facing some serious headwind. The trial resumes today in Queens State Supreme Court.

"The early impression thus far, to my satisfaction, they [prosecutors] have not made a case beyond a reasonable doubt," Richman said after court adjourned last week.

Richman was commenting in particular about the most serious first-degree manslaughter charge lodged against Detectives Michael Oliver, 36, and Gescard Isnora, 29. They are also accused of assault. Det. Marc Cooper, 40, faces misdemeanor reckless endangerment charges.

Bell, 23, was killed and his friends Joseph Guzman and Trent Benefield wounded on Nov. 25, 2006, in a 50-shot fusillade after they partied at the Kalua Cabaret.

More evidence to come

Richman and the other attorneys stressed that there was still more evidence to come for the prosecution and they could change their minds. But all agreed that witnesses called by the Queens district attorney's office so far seemed to bolster the police officers' self-defense argument.

"The prosecution is putting everything out there and what appears to be happening is that witnesses are, at least in part, supporting the defense case," said attorney James Kousouros of Kew Gardens, who has attended some of the trial.

"The [prosecution] witnesses were making it clear there was a perceived danger, that there was more than ample basis to think weapons were possessed during the context of a heated argument," Kousouros said.

Witnesses testified that Bell and friends argued with a man in an SUV outside the Kalua who acted like he had a gun. Det. Hispolito Sanchez testified he told Isnora about a possible weapon and about Guzman yelling out "Yo, go get my gun." No gun was found on Bell or his friends.

If the cops thought they risked being fired upon, that belief would undercut the top manslaughter charge because the police action would be seen as justified, said former federal prosecutor Steven K. Frankel. Judge Arthur Cooperman is hearing the case without a jury.

“I would think [first-degree manslaughter] is out; I don’t think the judge will show intent on the part of any officer to cause Sean Bell serious physical injury,” which is a necessary element of the crime, said former state prosecutor and defense attorney James DiPietro of Brooklyn.

DiPietro thinks the evidence so far shows that the police officers’ conscious objective that night wasn’t to go out and cause serious physical harm, but rather to defend themselves. The prosecution must disprove self-defense - or justification - beyond a reasonable doubt and DiPietro doesn’t think that has been done yet.

If Cooperman finds the officers were justified, the defendants would be acquitted of all charges, DiPietro said.

Unhappy with prosecution?

Some media reports stated that Bell’s family, including his fiancée, Nicole Paultre Bell, were displeased with prosecutors. But lawyers Sanford Rubenstein and Michael Hardy, who represent Paultre Bell, Guzman and Benefield, said that wasn’t so.

“Our clients have confidence in the prosecutors and understand all of the evidence is not in yet,” Rubenstein said.

Hardy said that prosecutors had to call Sanchez even though he has a sense of loyalty to old police colleagues. But he thought evidence supporting the first-degree manslaughter charge was still strong.

Attorneys for Oliver, Cooper and Isnora declined to comment Friday.

Through a spokesman, Queens District Attorney Richard Brown also declined to comment.

## **ON THE WITNESS STAND**

### *Highlights of week two in the Sean Bell trial:*

Dancer Marseilles Payne, who was working at the Kalua Cabaret on Nov. 25, 2006, looked up by her auto when she heard a collision on Liverpool Street to see police fire the first shots at Bell and his friends Joseph Guzman and Trent Benefield. Payne said she saw a man get out of the van that collided with Bell’s Nissan Altima and fire three shots. She then ran back to the Kalua as the shooting continued. Payne said she didn’t hear any commands or shouts of “police” in the instant before the shooting started.

Lorenzo Kinred, who had been partying with Bell and others at the Kalua, said he overheard Bell and the driver of an SUV exchange angry words outside the club after its closing. “I can take that from you,” Bell said to the man, apparently referring to what some onlookers thought may have been a weapon. Kinred didn’t witness the shooting.

Lt. Gary Napoli, the commander of the undercover unit probing suspected prostitution at the Kalua, said he got a frantic telephone call from Det. Gescard Isnora that “it is getting hot, getting hot” and that there might be a gun among some of those arguing outside the club. Napoli said he ordered his units to move in and that after his vehicle turned onto Liverpool Street he saw Bell’s car speed away. The next instant, Napoli heard a collision and then shooting. Napoli said he didn’t hear any commands shouted before the shots.

Det. Hispolito Sanchez, who was working undercover with Isnora at the Kalua, said that he witnessed an argument between Bell, Joseph Guzman and the SUV driver outside the club. Guzman said “Yo, go get my gun,” according to Sanchez. He also said he heard shouts of a command on Liverpool Street, followed by a crash and then shooting. It was Sanchez whose voice was heard on a 911 call reporting “shots fired, shots fired.”

SOURCE: *Proceedings in People v. Michael Oliver, et al., State Supreme Court, QUEENS*