



TRUTH & JUSTICE

Jeff Deskovic

Richard DiGuglielmo Surrenders to the Crushing Power of a Misguided Appellate Court

Longtime readers of *The Guardian* are well aware of fourteen years of court contortions and rollercoaster emotions for both the Campbell and DiGuglielmo families. For readers unfamiliar with the case, a short review is in order.

In the late afternoon of October 3, 1996, Charles Campbell, an amateur prize fighter and body builder in his thirties with an extensive criminal record, including crimes of violence, insisted on parking his Corvette directly in front of the Venice Deli so he could go across the street ostensibly to buy a slice of pizza from a pizzeria operator engaged in the sale of illegal drugs. The deli owner, Richard DiGuglielmo, Sr., a man in his mid-fifties who recently survived a heart attack, asked Campbell to move his car a few feet to unblock the deli entrance. Campbell ignored him and walked away. DiGuglielmo then placed a "No Parking" sticker on the window of Campbell's car.

Campbell saw this, and ran back, fists flying to pummel DiGuglielmo. Unbeknownst to Campbell, DiGuglielmo's son and son-in-law, each man in his early thirties, were inside the deli. The son, Richard DiGuglielmo, Jr. was a twelve-year veteran New York

City Transit Police Officer, and the son-in-law was a construction worker.

The son interceded to come between his father and an enraged Campbell. It took all three DiGuglielmo men to wrestle the muscular Campbell to the ground, causing him no serious injuries, as later confirmed by the Medical Examiner. A moment later, Campbell said "enough" and the DiGuglielmo men let Campbell get to his feet.

Officer DiGuglielmo and his brother-in-law then returned to the deli to clean up, leaving the elder DiGuglielmo with Campbell. DiGuglielmo bent over to pick up Campbell's shirt and cellular telephone which fell to the ground during the melee. In that moment, Campbell opened the trunk to his car, withdrew a metal baseball bat, and then moved around the car to the elder DiGuglielmo, and swung the bat with all of his might, striking the deli owner in the leg. A witness later told police the blow could be heard a block away. Campbell then swung at DiGuglielmo's hand and broke it. He then backed up a measured distance to make a full, roundhouse swing, and began to swing at DiGuglielmo's head.



Richard DiGuglielmo outside Westchester County Court with his lawyer Andrew Shapiro

Officer DiGuglielmo looked up, and his training kicked in. In compliance with his sworn duty as a police officer, and following police procedure, he fired "three rounds to center mass" which fatally injured Campbell.

There were three witnesses to the entire episode: Dillon, O'Donnell, and White. They all reported to police and media within minutes of the incident. They all said Officer DiGuglielmo's action was clearly justified in defense of his father who might have been maimed or killed.

Westchester Assistant District Attorney, Patricia Murphy, arrived at the

scene within twenty minutes. She wrote in her notebook the crime of 2d degree murder occurred, ignoring the separate and independent statements to media and police by all three eyewitnesses.

Murphy's boss, Westchester District Attorney, Jeanine Pirro, a consummate politician, had been in office nearly three years and was facing reelection. Once she learned Campbell was an African American and DiGuglielmo was Italian American, she decided a bias crime occurred, meaning Officer DiGuglielmo killed Campbell not because Campbell was about to beat his father to death with a metal bat, but instead, solely because he was black.

The elder DiGuglielmo and his son-in-law were charged with assault for wrestling Campbell to the ground after he tried to attack DiGuglielmo with his fists. Officer DiGuglielmo was charged with intentional murder and depraved indifference murder.

Eyewitnesses Michael Dillon and Jimmy White testified at trial, but their testimony differed from their statements given to police and media at the scene. Despite this, the jury acquitted the elder DiGuglielmo and his son-in-law of assault, and acquitted Officer DiGuglielmo of intentional murder. Tragically, it compromised and convicted him of depraved indifference murder.

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Richard DiGuglielmo's mother addresses the media outside Westchester County Court

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After serving eleven years in prison, his lawyers sought a new trial after they discovered Dillon and White changed their stories because they had been coerced by the Dobbs Ferry Police. Specifically, they had been arrested and held in lockup four nights in a row.

Under a Supreme Court case titled *Brady v. Maryland*, prosecutors must disclose to the defense any "evidence favorable to an accused." The prosecutors knew the eyewitness statements at the scene described a clear cut case of justifiable homicide, and also knew these witnesses changed their stories based on police coercion. Yet, the prosecutors never disclosed this to Officer DiGuglielmo's defense counsel.

Justice Rory Bellantoni presided over the new trial hearing. He heard tape recordings of the police interrogation of Dillon and White, and determined serious police coercion caused them to alter their testimony. Not surprisingly, A.D.A. Murphy and a Lt. Guinier were vociferous in denying the eyewitnesses had been coerced, but their denials were not credible.

Justice Bellantoni took fully nine months to consider the evidence presented to him before rendering an eighty-six page decision overturning DiGuglielmo's conviction and setting

him free. By this time, Janet Difiore took over from Pirro as Westchester District Attorney. She sought an immediate order from the Appellate Division to keep Officer DiGuglielmo locked up pending her appeal of Justice Bellantoni's decision setting him free, but was turned down.

Twenty months later, however, on May 25, 2010, a four-judge panel of the Appellate Division consisting of Justices Lott, Chambers, Covello, and Santucci reversed Justice Bellantoni and reinstated the murder conviction.

I was present with more than 100 other DiGuglielmo supporters on Thursday June 3rd, outside the Westchester County Courthouse and inside the packed courtroom of Justice Barbara Zambelli. Numerous Campbell family members and their friends were in the courtroom, too, and some had participated in a prayer vigil hours earlier outside the courtroom.

I spent sixteen years in prison wrongfully, based, in part, upon police misconduct. I firmly believe any police officer engaged in any kind of misconduct should pay for it to the fullest extent of the law. Each case, however, must be evaluated on its own merits lest an injustice be perpetuated upon a member of law enforcement.

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From where I stand, Officer DiGuglielmo acted properly and did nothing wrong. The justification statute clearly states that deadly force is appropriate to defend oneself or a third person faced with imminent serious bodily harm or death. Campbell hit DiGuglielmo's father in the leg with a metal bat, then broke his hand, then stepped back and raised the bat to beat him in the head. What was the son supposed to do? Wait until Campbell beat his father to death?

Defending a third person from deadly assault cannot be a racially motivated murder because, by definition, the shooter's motivation is to prevent harm to the victim being attacked, not take a life. In addition, bias crimes typically are proven by the defendant's use of racial epithets, membership in racist groups, etc. Not one witness testified Office DiGuglielmo uttered any racial statement. Nor was there any evidence he belonged to any white supremacist group. Common sense dictates that, at the critical moment, Officer DiGuglielmo was focused on the metal bat, not the color of the man wielding it.

Judge Bellantoni's decision was correct on several levels. Witness statements are frequently coerced by police to shape or alter their testimony at trial. For example, I was coerced into giving a false confession. Prosecutors had no excuse for hiding the coercion from the defense. Had the jury known Dillon and White changed their stories after being coerced by police, it almost certainly would have acquitted Office DiGuglielmo of depraved indifference murder, too.

For that reason, the Appellate Division ruling makes no sense. Justice Lott, writing for the panel, stated that disclosure of police coercion "would not have made a difference." This is absurd. The jury had to choose which version of events to believe:

what the eyewitnesses told police and media at the scene, or what they said in court many months later after they were intimidated by police. Had the jury known their trial testimony was compromised, this would have undermined the credibility of the prosecution's case. To insist otherwise, as the Appellate Division did, means in effect whenever a white police officer shoots a black perpetrator in self-defense or defense of another person, the officer is bound to be convicted by the jury.

The appellate judges also claimed that Officer DiGuglielmo's gun "was a far swifter, deadlier instrument" than Campbell's bat, and therefore, he supposedly had "time to display the handgun and deliver a warning." This, too, makes no sense. Deadly events do not happen in slow motion. Campbell was swinging at the elder DiGuglielmo's head. This was confirmed by the bullet entry wounds which showed Campbell was swinging as the bullets struck him.

In addition, the legal theory of depraved indifference murder makes no sense. It requires an act of extreme recklessness. The act of shooting someone at such close range is clearly intentional, not reckless. The only issue was whether the shooting was justified or not.

Richard DiGuglielmo was remanded back to prison by Justice Zambelli after twenty months of living a law abiding life.

Recent blogs prompted by media reports about the case would leave an uninformed reader to believe events on that fateful day in October 1996 were governed by race. The truth is that a man of any race swinging a bat at Office DiGuglielmo's father would be just as dead as Charles Campbell.

Jeff Deskovic spent sixteen years in prison for a murder and rape he did not commit. He writes about wrongful convictions and criminal justice issues.