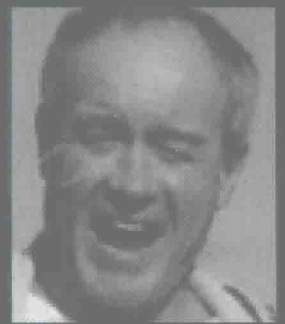
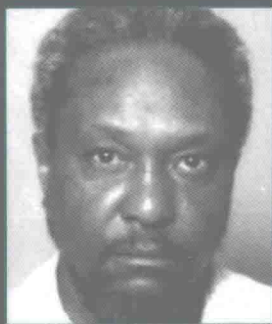
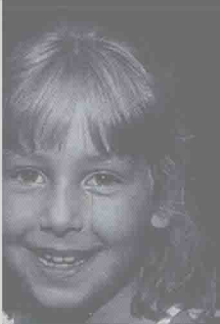


# CRIMINAL LAW CASE STUDIES

PAUL H. ROBINSON



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By

**Professor Paul H. Robinson**

*Edna B. & Ednyfed H. Williams Professor of Law  
Northwestern University School of Law*

**AMERICAN CASEBOOK SERIES®**



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N.B.—The facts recounted in these stories are true, as best as we can determine from our research of court documents, newspaper articles, and personal interviews. In places, I have added what I think is reasonable speculation about a person's motivation or state of mind as it appears from the person's conduct and circumstances.

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# CHAPTER 1. THE BASIC REQUIREMENTS OF CRIMINAL LIABILITY

## 1. THE CASE OF DESEAN MCCARTHY (ILLINOIS, 1997)

### A. THE FACTS

It is September, 1997. DeSean McCarthy is a 17-year old African American who was born on the south side of Chicago on July 24, 1980. The south side of Chicago is known for its high crime rate. The fourth district, which includes the towns of Markham and Harvey, where DeSean grew up, is predominately African American. DeSean grew up with his mother and five siblings at 180 East 152nd street. DeSean's mother and father had a common-law marriage, but DeSean had little contact with his father, who did not provide financial or emotional support to the family. Rather, DeSean's mother had a live-in boyfriend, with whom DeSean interacted frequently. This live-in boyfriend was an abusive drunk and often beat DeSean, his mother, and his siblings with belts, sticks, and extension cords. DeSean would frequently run away from home. He began using drugs at the age of 11 and later joined the "Four Corner Hustlers," a local street gang. He was smoking approximately 4 blunts (a combination of marijuana and PCP) and \$100 of marijuana a day. At the age of 13, DeSean was arrested for possession of cocaine and was transferred to juvenile division custody. The charges were subsequently dropped. Recently, DeSean was arrested twice for possession of controlled substances. These matters are still pending.

The Markham police department is familiar with DeSean, who also is known as DeSean Black, Ward DeSean, and Little D. In particular, a Markham officer previously attempted to pull DeSean over on an outstanding warrant for carjacking. DeSean attempted to flee, but was caught by the officers. He was released, however, because the accusation turned out to be false. DeSean was arrested one other time for fleeing and eluding the police, but was not convicted.

DeSean moved away from his mother's home two years ago to live with his grandmother, Deborah Black, in another part of the south side of Chicago. This move allowed him to be closer to his girlfriend, Monica Motley, and their nine-month old son. Although DeSean has not attended school regularly, he worked at Midway airport for an extended period of time in order to provide financial support for his son. DeSean is planning to start classes for his general equivalency degree in November of 1997.

Andre Griffin is 28 years old, and lives in Chicago with his fiancé, Renell Brown, and daughter. Late afternoon on Thursday, September 18, 1997, Renell asks Andre to take her 1982 Chevy Caprice to a mechanic for repairs. In addition to numerous mechanical problems, the steering column was "peeled" in a theft attempt, such that the car can only be started with a screwdriver. Andre takes the car, but instead of getting it fixed, he takes it to 154th street in Harvey, where he thinks he can rent it out. At the intersection of 154th street and Myrtle, he pulls over to talk to a woman



**Figure 1.** DeSean McCarthy.

who calls herself CoCo. Her real name is Shilita Williams. The two had never met before. He asks her if she wants to rent a car or knows someone who might want to rent a car in exchange for some cocaine. CoCo says that she knows of some people who might want to rent the car and tells Andre to take her to the village at 154th St. and Dixie Highway. When they get there, CoCo sees DeSean McCarthy who she knows as "Little D." CoCo asks DeSean if he knows anyone who wants to rent a car for some cocaine. DeSean says that he would and tells them to meet him at 154th and Wood. At that location, DeSean gets in the car and gives Andre 2-dime bags of cocaine. The two agree that DeSean will return the car at 9:00 pm that night.

Later that night, Andre arrives at the specified location, but DeSean never shows up. Andre does not report the car to the police as being stolen.

Andre sees DeSean two days later, between 10:00 and 11:00 am on Saturday, September 20, at an apartment building on 154th street. He flags DeSean down and tells him to park the car in the back of the building. DeSean drives the car around back, but when Andre walks to the back of the building, DeSean drives away. Andre still does not report the car to the police as being stolen.

Later that same morning, DeSean drives up to the house of Larry Mason, in Harvey. Larry is 19 years old, and has known DeSean for close to 10 years, since they attended school together as children. When DeSean pulls up to Larry's house, Larry is playing basketball with a group of friends. DeSean asks if anyone wants to buy the Chevy Caprice that he is driving. Mason looks inside the car and notices that the steering column has been broken into. He tells DeSean that he wants no part of a stolen car. DeSean insists that the car isn't stolen—that he has the title. He puts the car in park and starts searching the vehicle for the title. Mason's friends yell at DeSean to get the car off the block, so DeSean gets back into the car and drives away.

At 7:00 pm on September 20, DeSean is parked on Marshfield Street, just North of 165th street. This location is two blocks from where his meeting with Andre Griffin and CoCo had occurred. He looks in the rearview mirror and sees a Markham Police car driven by Officer Sean Laura, traveling Eastbound on 165th street. A short time later, the police car passes DeSean again, this time going westbound. When he sees the police car, DeSean becomes nervous. He does not want to get caught in a stolen car, with 2 ounces of marijuana on him, and without a driver's license. DeSean starts the car and drives north on Marshfield to 163rd street. While at a stop sign he sees the same police car stopped at a corner on 163rd street, headed eastbound. DeSean turns left on 163rd Street, and heads westbound, past the police car. He looks in his rearview mirror and sees the police car make a U-turn in the middle of the street. The police car begins following DeSean. DeSean continues and turns right on Wood Street. At that time, Officer Laura radios in that he is following a vehicle. As he approaches the Markham-Harvey border, the end of his jurisdiction as a Markham police officer, he notifies the dispatcher that he is going to make a traffic stop for "erratic driving." By the time DeSean reaches 159th and Wood Street, Officer Laura has turned on his emergency lights. DeSean does not pull over. He turns right at a street light, onto 159th street and continues eastbound. He is traveling at approximately 45–50 mph. The speed limit on 159th street is 40 mph. DeSean then turns left on Ashland and heads northbound, with Officer Laura close behind. He continues to drive at a speed of 45–55 mph. The speed limit on Ashland is 25mph. DeSean sees the police car behind him and notices an alleyway to his right. The alley is just before the intersection of Ashland and 155th street, and has a speed limit of 15 mph. Deciding that he would be better off on foot, he turns into the alley and dumps the car in a weedy lot behind 155th street, between Myrtle Avenue and Loomis Street. He leaves the ignition on, and proceeds to run on foot.

DeSean takes off and runs north through a darkened back yard and gangway on the first block of East 155th street. Officer Laura, after pulling up behind DeSean's abandoned car, turns off the ignition, grabs a flashlight, locks the car doors, and begins pursuing DeSean on foot. Using the radio on his shoulder, he notifies the dispatcher that he is engaged in a foot pursuit. The pursuit



continues until DeSean runs between two parked cars and onto the street in front of 155th, followed by Officer Laura.

Officer Charles Brogdon, a three year veteran of the Harvey Police Department, is in the area of 154th and Vine Street, conducting a field interview, when he hears over the radio that an officer is pursuing a suspect coming into Harvey from Markham. He jumps in his car, turns on his emergency lights, and heads towards the direction of the vehicle pursuit. While en route, Officer Brogdon hears from dispatch that the car chase has now become a foot pursuit in the vicinity of 155th street. Brogdon enters the area, heading south on Vine Street in his police car. He makes a sharp left onto 155th, nearly hitting a tree on that corner. In this area, 155th street is a two lane, 40 feet wide, asphalt-paved roadway, with residential living and on-street parking on both sides of the street. The posted speed limit is 25 mph in both directions. It is 7:15 pm, and dark. The streetlights in the vicinity are obstructed by large trees lining the block. When Officer Brogdon turns onto 155th street, he sees DeSean run across the street. Brogdon visually tracks DeSean, and radios in, stating: "Harvey, he is running north bound going towards 154th." Brogdon applies the brake and feels a thump, as the front wheel of his vehicle goes into the air.

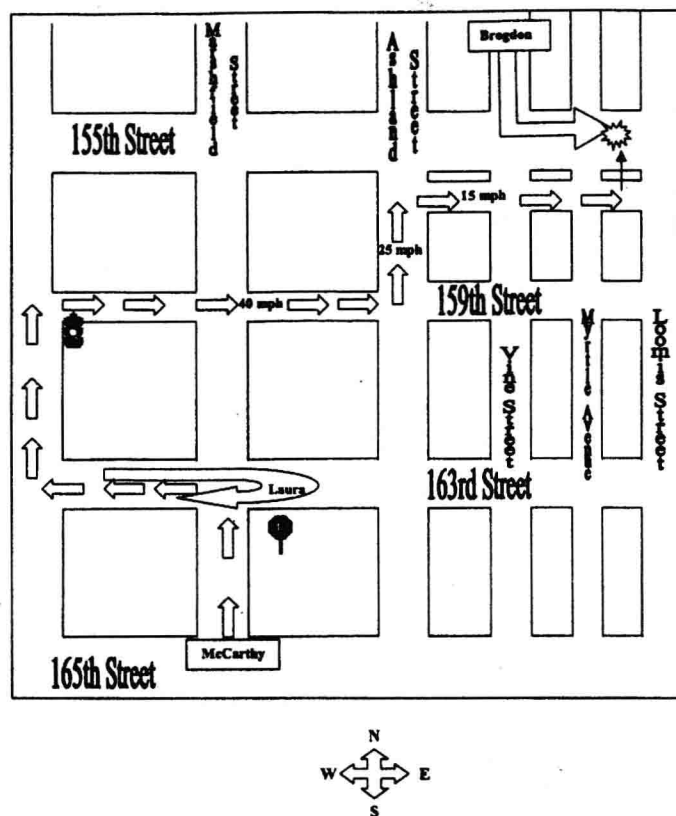


**Figure 2.** Officer Sean Laura. (*Southtown Daily News*)

Officer Laura, chasing after DeSean on foot, runs across 155th street in front of the police car driven by Officer Brogdon. He slips, causing his center of gravity to become lower than the impact point of the squad car. Rather than being thrown onto the hood of the squad car, Laura is pulled under the front tire. Officer Laura is dragged for approximately 100 ft before the police car comes to a complete stop. The lack of skid marks on the roadway indicates that there was no braking by the squad car. Officer Brogdon is traveling approximately 40mph when he hits Officer Laura. When the car finally comes to a full stop, Laura is pinned underneath the rear right tire.

Meanwhile, DeSean does not realize that Officer Laura has been hit. After reaching the other side of 155th Street, he continues to run, eventually hiding under a porch. After waiting there for 10 minutes he figures that the police officer is no longer following him, so he goes to a friend's house where he changes clothes.

Brogdon does not see Officer Sean Laura before hitting him. When he gets out of the car and realizes what has happened, he begins jumping up and down, crying and yelling, "That was Sean." By this time, other officers arrive at the scene and a crowd has formed. Gladys James, who was on her mother-in-law's front porch at 68 E.155th St. at the time of the accident says that Laura appears to be alive at this time, pinned underneath the back tires. The neighbors offer to jack up the car, remove Laura, and perform CPR, but police tell them to wait until the ambulance arrives. Firefighters arrive at the scene shortly thereafter. It takes them 20 minutes to pry the vehicle off of Laura. He is rushed by helicopter to Ingalls Memorial Hospital, where the emergency staff work for more than an hour to save his life. He is pronounced dead of multiple injuries at 8:58 pm



**Figure 3.** Map of DeSean's flight from the police.

When Officer Sean Laura begins pursuing DeSean McCarthy on the day of the accident, he is in the middle of his second shift of the day. He has worked his usual midnight shift ending at 8:00 am that morning and is already back at work at 4 pm because he has agreed to fill in for another officer who has requested the night off. Brogdon has been on duty for four hours at the time he responds to the scene. He is non-medicated and complains of no ailments that would impair his performance.

At the time of the accident, Officer Sean Laura is 25 years old, 6' tall and weighs approximately 222 lbs. Laura dreamed of becoming a police officer since he was 3 years old. That dream is prodded along when he comes into contact with the "nice cops" who would come by the house when, as a child, he would accidentally set off his mother's house alarm. Officer Laura's parents divorced at a young age, and Sean, the only child, remains with his mother, Patricia Laura, in Chicago. The two have a particularly close relationship, often attending basketball and football

games together. In September of 1995, Sean graduates from the Chicago Police Academy and passes the eligibility tests for the police departments in Chicago, Markham, and Cook County. Markham is the first department to call and offer him a job, which he accepts. Markham Police Captain, James Hunt, describes Laura as one of "the newer suburban policeman, extremely well-educated, well-trained." Laura hopes to become a state police officer and eventually an FBI agent. He is taking classes at South Suburban College.

Charles Brogdon is a 28-year-old, three-year veteran of the Harvey Police Department. He knows Sean Laura because they were classmates at both the Chicago Police Academy and South Suburban College. Brogdon is distraught after the accident and quits his job as a policeman one month later. He has worked in construction ever since.

The police trace the license plates and registration of the vehicle to Renell Brown. On the evening of September 21, the police question Brown and Andre Griffin. Andre states that he left the Caprice in Harvey, at his father's house a few days ago and is not aware that it has been stolen. On Monday, September 22, however, Andre Griffin is questioned again at the Markham Police Department. At this time, he admits lending the car to DeSean in exchange for drugs.

Several witnesses at the scene of the accident tell police that they saw a person they know as "Little D" running away on the night in question. The police learn from various witnesses that DeSean McCarthy went by the name of "Little D." When questioned, McCarthy admits running away from Officer Laura on the night in question and states: "I truthfully didn't mean no harm [to Laura]. When you're scared, your first instinct is to run."

DeSean McCarthy is arrested on Sunday, September 21, 1997 and charged with the death of Officer Sean Laura.

\* \* \*

Would you convict McCarthy for the death of Officer Laura? If so, what amount of punishment would you impose?

N	0	1	2	3	4	5	6	7	8	9	10	11
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
no	liability	1 day	2 wks.	2 mo.	6 mo.	1 yr.	3 yrs.	7 yrs.	15 yrs.	30 yrs.	life	death
liability	but										imprison-	
	no										ment	
	punishment											

## B. EXISTING LAW APPLIED IN THE CASE

### Smith-Hurd Illinois Compiled Statutes Annotated (1993)

#### § 625-5/4-103—Offenses relating to motor vehicles and other vehicles—Felonies

(a) It is a violation of this Chapter for:

(1) A person not entitled to the possession of a vehicle or essential part of a vehicle to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted . . . It may be inferred . . . that a person exercising exclusive unexplained possession over a stolen or converted vehicle or an essential part of a stolen or converted vehicle has knowledge that such vehicle or essential part is stolen or converted, regardless of whether the date on which such vehicle or essential part was stolen is recent or remote; . . .

(b) Sentence. A person convicted of a violation of this Section shall be guilty of a Class 2 felony.

#### § 625-5/4-103.2.—Aggravated offenses relating to motor vehicles and other vehicles—Felonies

(a) It is a violation of this Chapter for:

. . .

(7) a person:

(A) who is the driver or operator of a vehicle and is not entitled to the possession of that vehicle and who knows the vehicle is stolen or converted, . . . who has been given a signal by a peace officer directing him to bring the vehicle to a stop, to willfully fail or refuse to obey such direction, increase his speed, extinguish his lights or otherwise flee or attempt to elude the officer. The signal given by the peace officer may be by hand, voice, siren, or red or blue light. The officer giving the signal, if driving a vehicle, shall display the vehicle's illuminated, oscillating, rotating or flashing red or blue lights, which when used in conjunction with an audible horn or siren would indicate that the vehicle is an official police vehicle. Such requirement shall not preclude the use of amber or white oscillating, rotating or flashing lights in conjunction with red or blue oscillating, rotating or flashing lights as required in Section 12-215 of this Code; . . .

(b) The inference contained in paragraph (1) of subsection (a) of Section 4-103 of this Code shall apply to subsection (a) of this Section.

(c) A person convicted of violating this Section shall be guilty of a Class 1 felony.



(d) The offenses set forth in subsection (a) of this Section shall not include the offenses set forth in Section 4-103 of this Code.

**§ 625-5/11-204.1—Aggravated fleeing or attempt to elude a police officer**

(a) The offense of aggravated fleeing or attempting to elude a police officer is committed by any driver or operator of a motor vehicle who flees or attempts to elude a police officer, after being given a visual or audible signal by a police officer . . . and such flight or attempt to elude:

- (1) is at a rate of speed at least 21 miles per hour over the legal speed limit;
- (2) causes bodily injury to any individual; or
- (3) causes damage in excess of \$300 to property.

(b) Any person convicted of a violation of this Section shall be guilty of a Class 4 felony. . . .

**§ 720-5/2-8—Forcible felony**

Forcible felony means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.

**§ 720-5/4-6—Recklessness**

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 performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.

**§ 720-5/9-1—First degree murder—Death penalties—Exceptions—Separate hearings—Proof—Findings—Appellate procedures—Reversals**

(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

- (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
- (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
- (3) he is attempting or committing a forcible felony other than second degree murder. . . .

**§ 720-5/9-2—Second degree murder**

(a) A person commits the offense of second degree murder when he commits the offense of first degree murder as defined in paragraphs (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:

- (1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or
  - (2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing . . . but his belief is unreasonable.
- . . . .