The Verdict

By Daniela Cobos and Ann W. Schmidt

In 1999, four white police officers killed Amadou Diallo and were charged with murder. A year later, a jury found them not guilty.

The trial took place in Albany — even though the killing happened in the Bronx.

24 years later, we wanted to know why the jury voted not guilty. Does justice mean something different depending on where you are?

TRANSCRIPT

COBOS: It's late afternoon on February 25, 2000. And a verdict is about to be read in one of the biggest trials in New York's history.

Four white police officers are charged with killing an unarmed Black man a year earlier.

His name was Amadou Diallo.

MUSIC IN

He was standing outside his apartment building in the Bronx, when the officers approached him. They say they saw him reach into his pocket. They thought he had a gun.

They fired 41 shots into the doorway where Amadou was standing. Nineteen hit him, the first one likely killed him.

MUSIC OUT

But Amadou didn't have a gun. He was just reaching for his wallet.

ARCHIVED FOOTAGE

PROTESTERS: Amadou! Amadou!

SCHMIDT: The city is outraged.

ARCHIVED AP FOOTAGE

ROBERTO RAMIREZ: And no person in this city, especially if you're of color, should have to worry when your children go out, so that they may not be able to come back.

SCHMIDT: Protestors come out in the thousands, including Rev. Al Sharpton.

ARCHIVED AP FOOTAGE

REV. SHARPTON: Amadou! Amadou! Amadou! Don't shoot on our people 41 times.

SCHMIDT: The protests last for weeks. And over a thousand people are arrested.

Meanwhile, The four white officers are charged with second-degree murder. That means Amadou's killing was intentional.

The trial lasts three weeks. And the country is watching. The decision is up to 12 people on the jury. Four of them are Black, the rest are white.

COBOS: To many in the Bronx — where Amadou lived and was killed — the officers are guilty. But the trial doesn't happen in the Bronx. It happens in Albany, 150 miles away. And so no one is sure of the outcome.

ARCHIVED COURT TV

TERESI: I've received your note that you've reached a verdict, is that true Madame Foreperson?

FOREPERSON: Yes, Your Honor.

TERESI: Would you please stand, and the clerk will address you and take the verdict.

COBOS: The jury foreperson stands up, ready to give the jury's final decision.

FOREPERSON: Not guilty.

CLERK: Was your verdict unanimous?

FOREPERSON: Yes.

COBOS: This goes on for about 15 minutes — all charges being read for each officer.

CLERK: With respect to defendant Sean Carroll.

FOREPERSON: Not guilty.

CLERK: Defendant Edward McMellon.

FOREPERSON: Not guilty.

CLERK: Defendant Richard Murphy.

FOREPERSON: Not guilty.

COBOS: All four officers are found not guilty on all counts.

People are furious. They take to the streets.

ARCHIVED FOOTAGE

PROTESTERS: Hey hey! Ho ho! Killer cops have got to go!

COBOS: Even the president at the time, Bill Clinton, weighs in.

ARCHIVED AP FOOTAGE

PRESIDENT CLINTON: Most people in America of all races believe that if it had been a young, white man in a young, all-white neighborhood, it probably wouldn't have happened.

THEME MUSIC IN

SCHMIDT: So we wanted to know, what happened? Why did the jury find all four officers not guilty? And what role did location play in that? Does justice mean something different depending on where you are?

COBOS: This is Shoe Leather, an investigative podcast that digs up stories from New York City's past to find out how yesterday's news affects us today.

SCHMIDT: This season we're going back to 1999 to tell the story of Amadou Diallo. An unarmed Black man who was killed by four white police officers in the Bronx.

I'm Ann Schmidt.

COBOS: And I'm Daniela Cobos.

This is Shoe Leather, Season 5: After Amadou.

SCHMIDT: You're listening to The Verdict.

THEME MUSIC OUT

THE TRIAL IS MOVED

SCHMIDT: The killing of Amadou Diallo is just the latest in a series of brutal interactions between police and Black men in the 1990s.

ARCHIVED PBS NEWSHOUR FOOTAGE

JIM LEHRER: A bystander videotaped the policemen shocking 25-year-old Rodney King with a stun gun. Then clubbing and kicking him as he lay on the ground.

SCHMIDT: In 1991, Rodney King was nearly beaten to death in Los Angeles.

ARCHIVED AP FOOTAGE

PROTESTERS: No justice! No peace! No justice! No peace! No justice! No peace!

SCHMIDT: In 1997, Abner Louima was beaten and sodomized while in police custody in Brooklyn.

ARCHIVED AP FOOTAGE

RON DANIELS: The case of Abner Louima, however, is not some heinous aberration. It is symptomatic of a growing epidemic of police brutality and misconduct.

SCHMIDT: So when Amadou is killed, the people of the Bronx are fed up.

And they're afraid for their lives.

COBOS: A New York Times poll finds that almost 90 percent of Black respondents think police are biased against them and respond to them with brutality.

SCHMIDT: The actions of the officers in the Amadou case seem so egregious — remember, they fired 41 shots — and the outrage is so intense, that within just a few weeks of Amadou's death, a Bronx grand jury starts hearing evidence for a possible indictment of the officers.

COBOS: And then, on March 25, 1999, the grand jury decides.

Sean Carroll, Kenneth Boss, Edward McMellon and Richard Murphy are all indicted on second-degree murder charges.

That means, the next step is a trial. The officers could face up to 25 years in prison if they're convicted.

For Amadou's mother, Kadiatou Diallo, it feels like there could be a moment of accountability. A moment of justice for her son.

ARCHIVED AP FOOTAGE

KADIATOU: We will come to defend Amadou and demand justice. We are here for this. And we will come back again until justice is done.

SCHMIDT: Meanwhile, the cops all plead not guilty to the charges. One of them, Richard Murphy, even speaks out.

ARCHIVED AP FOOTAGE

MURPHY: I did nothing wrong and this trial will show that I did nothing wrong. And I'm looking forward to it.

MUSIC IN

COBOS: The trial is set to begin on January 3, 2000, almost one year after Amadou's death.

And it's supposed to take place in the Bronx where Amadou lived and was killed. That means the jury would be made up of people from the Bronx.

SCHMIDT: Here's where it's important to understand that at this time, the Bronx is 84 percent Hispanic and Black and only 15 percent white.

So that's the backdrop ahead of the trial. A community that's angry and afraid. A jury pool that will come from that community.

COBOS: But the defense attorneys for the officers decide to act.

BROUNSTEIN: I think that the atmosphere in the city, number one I think there would've been some severe prejudice against these police officers receiving a fair trial.

COBOS: That's Steven Brounstein. He's a defense attorney for one of the officers.

BROUNSTEIN: I think the atmosphere in the city was very, very heated. And I think you needed cooler heads.

MUSIC OUT

COBOS: And so the defense attorneys all get together and make a game-changing decision. They file a motion to have the trial moved to a different location.

BROUNSTEIN: This was unusual in the sense that we all worked together, all defense counsel worked together.

We all joined. We were all part of it.

SCHMIDT: Eric Warner is the lead prosecutor for the case. He remembers the moment he saw the motion.

WARNER: I felt I've been in this county working here, meeting jurors, meeting people, meeting witnesses for decades. And these are good people. These are fair people.

SCHMIDT: He didn't think it was right to move the trial before Bronx residents had a chance to show that they could be impartial jurors.

WARNER: Where did they suggest move it? To Westchester. That was so cynical to me.

COBOS: At first, the defense attorneys asked to have the trial moved to Westchester County. It's a suburb of New York that borders the Bronx.

SCHMIDT: In 2000, 64 percent of the residents there are white. It's also where a lot of New York City law enforcement officers live.

COBOS: And so that's the pool from which the jury would be chosen if the trial was moved there.

WARNER: You think it stopped at the Bronx border and didn't cross over to Westchester? Do you think the people of Westchester, without even knowing in advance, that they are more equipped to resist the pressure? Do you think they have different reactions to the pressure? How can you justify picking Westchester as the place to move it?

SCHMIDT: Warner didn't buy the defense attorneys' argument that Westchester would somehow be a more fair location for the trial.

He also says that location violates the law — that a jury should reflect the same kind of community where a crime happened.

WARNER: Would anybody think that it could reasonably be claimed that, that the character of the county to which the case would be transferred, Westchester, reflected the character of the county, The Bronx, where the crime was committed. That's a legal requirement.

SCHMIDT: The decision comes down to an appellate court, to a panel of five judges. And on December 16, 1999 — less than a month before the trial is supposed to begin — they announce their decision.

A TOUR OF THE COURTHOUSE

COBOS: In their decision, the judges write that there's been so much biased publicity that even trying to find a fair jury "would be fruitless."

They say that all New York City residents have been told the same thing over and over: that because the cops fired 41 shots and Amadou was unarmed. They're guilty.

SCHMIDT: But they don't think moving the trial to Westchester would solve that problem. And it might create a new one.

MUSIC IN

They write: "A change of venue should, of course, not afford defendants an unfair demographic advantage."

And so instead, the judges rule that the trial should be in an urban area. So they choose Albany, the state capital, 150 miles away in upstate New York. Their decision is final.

COBOS: For the defense attorneys, the move is a relief.

BROUNSTEIN: We felt like we got what we needed.

COBOS: But for Amadou's mom, it doesn't feel fair.

ARCHIVED FOOTAGE

KADIATOU: If this is going to be elsewhere, it can be not fair to the family and to the community in the Bronx.

COBOS: And Rev. Al Sharpton thinks the defense attorneys had another motive.

ARCHIVED FOOTAGE

SHARPTON: What they really are trying to do is get a white jury. The demographics of Albany's different than The Bronx.

SCHMIDT: Remember that in 2000, a majority of people living in the Bronx are Black and Hispanic. But Albany looks very different. At the time, about 82 percent of residents are white.

MUSIC OUT

And so after the judges' decision, this is where the jury will come from.

COBOS: But more than just demographics, Albany has a different relationship with police.

An article from The New York Times finds that other police officers who have been charged and gone to trial in Albany around this time haven't been convicted. One Albany attorney tells the newspaper that jurors often see things from a police perspective.

SCHMIDT: When the trial is moved to Albany, it's assigned to a judge in the Third Judicial District of Albany County. His name is Joseph Teresi. He remembers getting a phone call from the chief administrative judge of New York.

TERESI: He called me up and asked me whether I'd be willing to preside at the trial.

SCHMIDT: So what did you say?

TERESI: I said sure.

SCHMIDT: How did you feel about presiding over this trial?

TERESI: Well, naturally, I was a little nervous.

[STARTING THE CAR]

COBOS: We wanted to sit down with Judge Terresi and to actually see where the trial took place. So we head to Albany on a Wednesday in April.

SCHMIDT: Hello!

COBOS: Hello! How are you?

SCHMIDT: Good! How are you?

COBOS: Good morning!

SCHMIDT: Good morning!

SCHMIDT: I pick Daniela up very early in the morning. So we can make the three-hour drive up to Albany together.

[RADIO SOUNDS]

We're going to meet Judge Teresi in the courthouse, the same courthouse where the trial happened. He retired from the Third Judicial District in 2014, but he still spends about two days a week in court. In family court, that is, serving as a judge there.

TERESI: Joe Teresi

COBOS: Hi. Nice to meet you. How are you?

TERESI: I'm good. And you?

COBOS: Good.

SCHMIDT: He takes us on a tour of the courthouse.

And to the room where the trial happened over 24 years ago.

TERESI: So, courtroom's there.

SCHMIDT: That's the one?

TERESI: There's a proceeding going on in there right now.

COBOS: We do eventually get to step inside the courtroom — and it's really big. There's a long, curved table at the front of the room where Judge Teresi would have sat.

SCHMIDT: And there's a huge chandelier in the middle of the ceiling. The jury would have sat in a row of chairs on a raised platform, to the right of Teresi. At the back of the courtroom is the door to the jury deliberation room.

This is where 12 men and women will decide the fate of the four officers. But the first step is to pick the 12 jurors. And this is no easy job.

THE FINAL JURY

MUSIC IN

COBOS: So how is a jury chosen? One important thing to know: For someone to become a juror, they have to show that they're impartial.

So first of all, prospective jurors are randomly called. They make up the jury pool.

The judge oversees this whole process.

Then, the prosecution and the defense ask those people questions about their lives. To determine if they can be impartial or not. But sometimes, potential jurors will just come out and say they can't do that, so they get removed.

And then each side — the prosecution and the defense — also gets to remove potential jurors they don't like.

So what that all means is that the 12 jurors who get selected have been approved by both the prosecution and the defense.

MUSIC OUT

RENATO STABILE: Jury selection isn't really jury selection. It's jury de-selection.

COBOS: That's Renato Stabile. He was a practicing lawyer for 17 years. He now works as a trial consultant.

STABILE: What you're trying to do as a jury consultant is come up with a de-selection profile. De-selection just means, who are the people you really can't live with? Who are the worst jurors for you?

SCHMIDT: Eric Warner, the prosecutor in the case, remembers going through that de-selection process.

WARNER: You ask questions designed and it's part art, part science. It's a mixture.

SCHMIDT: Of trying to eliminate jurors that would be the "worst" for the prosecution.

The defense attorneys have a tough time with jury selection. Even though they got what they wanted by moving the trial.

BROUNSTEIN: I remember jury selection. It was difficult because of the publicity. You didn't want that.

SCHMIDT: We wanted to talk to the jurors ourselves. And so we reached out to the court for the records. But because the officers were acquitted, the records were sealed. So then we used news reports from the time to make our own list of jurors. We went looking for them in Albany.

[KNOCKING ON DOORS]

SCHMIDT: We knocked on a lot of doors. But no luck.

COBOS: We eventually reached one juror by phone.

[PHONE RINGING]

COBOS: But she didn't want to talk.

Back to the trial. After two days of picking through hundreds of people, the final jury is chosen.

MUSIC IN

SCHMIDT: The jury is made up of seven white men, one white woman, and four Black women.

A New York Times article headline reads, "In Diallo Trial, Lawyers Select A Diverse Jury."

COBOS: The media also reports that the foreperson — the spokesperson for the jury, who oversees jury deliberation — is a Black woman who had lived in the Bronx years earlier.

The final jury may have been diverse for Albany's population at the time. But not necessarily for the Bronx.

With the jury set, it's time for the trial to begin.

THE ONLY EYEWITNESS

SCHMIDT: The first day of the trial is February 2, 2000, almost a year to the day since Amadou's killing. The entire thing is broadcast each day on Court TV.

The prosecution begins with opening statements.

MUSIC OUT

ARCHIVED COURT TV

WARNER: In the 1990s, in Bronx County, in Albany County, or anywhere else, a human being should've been able to stand in the vestibule of his own home and not be shot to death. Especially when those doing the shooting are police officers sworn to protect innocent people.

SCHMIDT: Each of the defense lawyers gets a chance to speak too, including Steven Brounstein, the lawyer for Officer Kenneth Boss.

BROUNSTEIN: A mistake happened. A mistake caused by fear. Fear of losing your life. Fear that your colleagues have been shot. Fear of having to make a decision, in a split second, a split second, whether to shoot in defense of yourself and your colleagues or take the risk of being shot yourself. This is a tragedy, not a crime.

SCHMIDT: The lawyer for Officer Richard Murphy ends opening statements.

JAMES CULLETON: My heart goes out to the Diallo family, as does my client's heart. And I am sure that all of you feel the same way. But as we begin this trial, I want to remind you of the oath that you took when you were sworn in as jurors. And when you promised me and my client that you would put aside your natural feelings of sympathy and judge this case based upon the evidence that comes out in this courtroom.

SCHMIDT: After the opening arguments, each side calls different experts and witnesses to testify, starting with the prosecution.

COBOS: One of the key witnesses for the prosecution is Dr. Joseph Cohen. He's the medical examiner who did an autopsy of Amadou's body.

He testifies that 19 bullets hit Amadou and that it was likely one of the earliest bullets that did the most damage.

COHEN: The effect of gunshot wound A is primarily twofold. One is due to the aortic injury, the defect in the aorta, and the other is due to the spinal cord injury.

COBOS: What Dr. Cohen is saying here is that one, this particular shot paralyzed Amadou. And two, it might have been the shot that killed him.

COHEN: With a hole in this region or any region, any area of the aorta here, blood will rapidly pour out of that hole into the chest cavities.

SCHMIDT: He's saying that this one bullet caused a lot of bleeding and that the other 18 wounds didn't bleed that much.

And so It's likely there would have been more blood from other bullet wounds if this paralyzing shot hit Amadou later.

So this is why Dr. Cohen thinks that this shot hit Amadou early and that it would have been deadly.

WARNER: Would it lead to unconsciousness?

COHEN: Sure would. Eventually, yes.

WARNER: And death?

COHEN: Yes.

COBOS: Dr. Cohen also testifies that at least two shots may have hit Amadou after he had fallen.

WARNER: Tell us, please, what your — why you believe that it may have been sustained, or why it's consistent with having been sustained when Mr. Diallo was actually on the ground.

COHEN: It's consistent because of the strikingly upward trajectory of the bullet.

SCHMIDT: That means Amadou was down — and maybe even dead — pretty early on in the encounter. But the police kept shooting, 41 times.

MUSIC IN

SCHMIDT: Eventually the prosecution finishes laying out its case. Then, it's the defenses' turn.

COBOS: They call their own experts and witnesses.

And it turns out there's only one eyewitness.

Several people hear the gunshots that night, but only one person sees what happens. Her name is Schrrie Elliott.

[PHONE RINGING]

COBOS: Hello.

SCHRRIE: Yes?

COBOS: Good afternoon, it's Daniela.

SCHRRIE: I know.

COBOS: Eleven messages and 10 days later, I'm on the phone with Schrrie.

MUSIC OUT

COBOS: And when I was researching, like reading articles, and I've watched hours of Court TV. I became very interested in your point of view and what you had to say.

I just think it would be very powerful for you to be able to talk about that, if that's something you would be comfortable with.

COBOS: There's a long pause on the other end of the call — more than 20 seconds — and then Schrrie finally answers.

SCHRRIE: Daniela?

COBOS: Hello?

SCHRRIE: Yeah.

COBOS: Yes.

SCHRRIE: Yeah, it's fine. I could talk about it.

I don't mind talking about it because I know how it feels to lose someone. My brother was also killed too. And just by you bringing that up, it just triggered. That was a bad day for him too because I was there to watch it, actually happen.

I'm talking about Amadou Diallo. I'm talking about his case. I was there, across the street, when it happened.

COBOS: I mean, you were the only eyewitness. Everybody else only heard.

SCHRRIE: I know. And they tried to make me seem like I was stupid or the bad guy.

COBOS: Here's what you need to understand about Schrrie's testimony. The reason she was called to the stand is because of an interview she gave to the media a few weeks after Amadou was killed.

ARCHIVED FOOTAGE

SCHRRIE: He said that he got a gun, that's what he said, that he have a gun. And everybody starts shooting at this man.

SCHMIDT: That's Schrrie talking to WNBC. She wanted to be anonymous, so they changed the tone of her voice when they broadcast the interview. She hadn't come forward to the authorities. So this is the first time they learn that there's an eyewitness. She's subpoenaed to appear in court and testify by the defense attorneys for the police.

They call her to the stand because she says in the interview that the police said, "gun" before they shot Amadou. The defense attorneys think this can show the jury that the officers really did think Amadou had a gun. And that's why they reacted, and fired.

Schrrie testifies for the first time on February 10. She starts by answering questions from the defense.

DEFENSE: And just before the shooting, did you hear someone say, "gun?"

SCHRRIE: Yes.

DEFENSE: How many men did you see when you heard the word gun?

SCHRRIE: Four.

DEFENSE: How were they dressed? As best as you remember.

SCHRRIE: Plain clothes.

DEFENSE: Did you know they were police officers?

SCHRRIE: Yes.

COBOS: Then, it's the prosecution's turn to ask the questions.

PROSECUTION: Did you hear anyone say, "Police, freeze, don't move! Let's see your hands?"

SCHRRIE: No.

PROSECUTION: And wasn't this man standing with his back to them?

SCHRRIE: Yes.

COBOS: "This man" means Amadou.

PROSECUTION: And didn't the man turn around?

SCHRRIE: Yes.

PROSECUTION: And didn't someone shout, "Gun?"

SCHRRIE: Yes.

PROSECUTION: And didn't they all start firing at the man?

SCHRRIE: Yes.

PROSECUTION: And when they shot him, he fell down immediately, right?

SCHRRIE: Yes.

PROSECUTION: And they continued shooting while he was down?

SCHRRIE: Yes.

COBOS: Schrrie testifies that the cops didn't identify themselves as police. This is really important, because the police were part of an undercover unit called the Street Crime Unit. They wore plain clothes and drove an unmarked police car. And so if they didn't identify themselves as police, Amadou might not have known who they were.

SCHMIDT: She also testifies that it's unclear who said, "gun" before Amadou was shot.

PROSECUTION: And you don't know who said, "Gun?"

SCHRRIE: No.

PROSECUTION: It could've been the man inside saying, "gun," right?

SCHRRIE: Yes.

SCHMIDT: That's the opposite of what she said in the NBC interview, when she claimed that she heard one of the officers say it.

After she testifies, Schrrie gives another interview. And she flips again, going back to what she said in the first interview, that the police officers said, "gun" before shooting Amadou.

ARCHIVED FOOTAGE

NEWS ANCHOR: She told investigators: Moments before the shooting, she saw three of the officers approach Diallo. Within seconds, she heard one yell, "Gun."

What did you hear the officers say?

SCHRRIE: "Gun," and that's it.

SCHMIDT: A few days later, Schrrie testifies again. The defense plays both of her WNBC interviews and asks her about them.

DEFENSE: Do you recall that you did an earlier interview with Mr. Weinberger back in February of last year, 1999? Correct?

SCHRRIE: Yes.

DEFENSE: And you recall that he asked you at that time whether or not one of the officers said anything, and you answered, "Gun."

Do you recall being asked that question and giving that answer?

SCHRRIE: Yes.

SCHMIDT: This time, Schrrie testifies that it was in fact one of the officers who said, "Gun."

COBOS: When I talk to Schrrie, I want to ask her about all of this to hear her version of events, more than 20 years later. I start with the night Amadou was killed.

COBOS: Do you think you would be able to tell me what you remember about that evening?

SCHRRIE: I just happened to be walking down the street, on the left side of the street. Amadou Diallo, his building is on the right side of the street, on the corner.

All of a sudden, this car just came. Everybody jumped out.

And it was a man standing in his doorway. They did not say anything. They just got out of the car and just start shooting. There was no, “Put your hands up. I’m the police.” Like, they did not say anything.

COBOS: What Schrrie tells me is the same thing she said on the stand — that the officers didn’t announce themselves as police.

SCHRRIE: One of them — I don’t know which one of them said it, but they said, “Gun.” And that’s when all hell broke loose.

And I still remember this day like it happened yesterday, even though it’s 25 years later.

COBOS: She tells me what she told the NBC reporter — that the police definitely said, “gun,” because they thought Amadou had a gun.

MUSIC IN

Schrrie says that the confusion over her court testimony all those years ago was because of how the lawyers asked her the questions. It was mostly just yes or no. She feels like she didn’t really get to speak for herself, in her own words.

SCHRRIE: It was just becoming too much. And I was crying and they had to take a break. Like I couldn’t. I couldn’t do it.

But he never said either Amadou or nobody. He said, “Who said gun?” I said, “Police said gun.”

COBOS: Schrrie maintains it was most definitely the cops.

SCHRRIE: I said what I said, and I’m going to still from this day forward until the day I die, I’m still gonna stick to what I’ve seen and what I know.

COBOS: Schrrie has no regrets about coming forward as a witness, or about testifying.

SCHRRIE: I want his mother to have peace. If I didn’t stop that day to talk to Channel 4, because, like I said, I was gonna walk right past them. But my mom — she came into my head — and it’s like, “No, you have to stop.” And that’s what I did. I said what I said.

I’m still going to say what I’m saying today. Ms. Amadou Diallo, she lost her son and I lost my brother. And it, it’s hurtful to lose a child by the hands of somebody else. He was a good person and nobody’s family should have to go through this.

COBOS: Schrrie’s testimony does seem to help the prosecution. Especially the part about the police not identifying themselves to Amadou.

MUSIC OUT

SCHMIDT: But then the defense gets its chance to call the most important witnesses.

A SECOND CHANCE TO EXPLAIN

SCHMIDT: Those witnesses are the officers themselves. This will be the first time the public is hearing their version of what happened on February 4, 1999.

Officer Richard Murphy starts from the beginning.

MURPHY: We turned on to Wheeler Avenue, and we were going up the block. I was looking out my window on the left side, and, about a quarter away, maybe a little more up the block, I heard Sean say to Kenny Boss, you know, hold up, hold up. I got something on the right.

SCHMIDT: Then, Officer Sean Carroll explains why Amadou stuck out to him.

ATTORNEY: Were you suspicious of him?

CARROLL: Oh, absolutely.

ATTORNEY: What made you suspicious? Could you tell us, please?

CARROLL: Just his actions alone. The way he was peering up and down the block and the way he, he — it would appear to me that he slinked back into the, to the vestibule.

SCHMIDT: The officers claim they thought Amadou was a suspected rapist.

COBOS: They're in an unmarked car. And they pull over. Carroll and Officer Edward McMellon get out of their car and walk toward Amadou.

All of the officers testify that they announced themselves as police. Even though none of the witnesses heard it. Including Schrrie.

The officers say Amadou stepped backward and put his hand in his pocket. Officer McMellon says he saw Amadou holding something.

MCMELLON: And in his hand I could see a black square object. He was, he was gripping a black square object, and, I thought it was a gun. And he started turning. He started, he turned and, I heard Sean yell, "He's got a gun!" And, I scream, "What are you doing?" And I fire.

COBOS: Here's Officer Kenneth Boss describing Amadou.

BOSS: He's crouched and he's got his hand down and I see a gun. I said, "My god, I'm going to die." I fired my weapon. I fired it as I was pushing myself backwards, and then I jumped off to the left. I was out of the line of fire.

COBOS: They eventually stopped shooting and searched for the gun. Here's McMellon again.

MCMELLON: Sean was kneeling over Mr. Diallo. I heard Sean say, "Where's the fucking gun?" You know, "Where's the fucking gun?" And, I could see — it was, it was dimly lit. So I had to,

you know, I had to step down and Mr. Diallo's right hand was outstretched and I could see a black square object and I thought it was a gun. I went to grab the gun, and, as I got closer, it wasn't a gun.

COBOS: It was Amadou's wallet.

Meanwhile, Carroll is pleading with Amadou:

CARROLL: At that point, the individual was still moving on the floor and he was breathing. I told him, "Don't die. Don't die. Keep breathing."

I said, "Oh my god." And I just held him, his hand and rubbed his face. "Please, don't die."

MUSIC IN

SCHMIDT: Despite how emotional it is, the lead prosecutor, Eric Warner, thinks their testimony solidifies his case.

WARNER: Under this non-emergency, non-threatening no radio call, no 911. You turn down whatever streets you thought. You picked who to talk to, and then you four, with your training, determined the time and place and the manner in which any encounter is going to take place. If the encounter goes wrong, you can't blame the person encountered. You have to look to yourself.

COBOS: But Steven Brounstein thinks otherwise. He says his client, officer Kenneth Boss, did an excellent job on the stand.

BROUNSTEIN: He was honest and straightforward on the witness stand, on both direct and cross-examination. And as any witness should be, as any lawyer should do, I, you know, I worked hard at preparing my client.

People thought it was some of the best testimony they had ever seen, because it was just the truth.

COBOS: The officers' testimony is one of the last things the jury hears at the trial.

And it's certainly the most emotional thing they heard. Everything else has been pretty technical and methodical.

There's been no other emotional testimony to counteract the officers' emotions.

MUSIC OUT

SCHMIDT: The one person who could have theoretically done that was Amadou's mother, Kadiatou.

WARNER: She was one of the most impressive people I've ever met.

SCHMIDT: Warner considered calling her to the stand.

WARNER: Some have said to me, “Why didn’t you call the mom? Didn’t you think she’d be a good witness?” The fact is, I thought she would be an astounding witness, in terms of her ability to impress the jurors with whatever she said. The problem is, you know, it’s a legal issue.

SCHMIDT: But she didn’t testify, because Warner’s hands were tied.

WARNER: What the law requires is that to prove something, it has to be factual and you have to prove it by evidence. You have to rely on facts, not opinions.

SCHMIDT: Warner says that Kadiatou wouldn’t have been allowed to testify, even if he had tried to call her.

That’s because she wasn’t there when Amadou was killed. She couldn’t provide evidence about that night.

And even if she wanted to testify about Amadou’s character, that wouldn’t have been allowed either. His character wasn’t being questioned, the officers’ conduct was.

COBOS: Defense attorney Steven Brounstein says the same thing.

BROUNSTEIN: Testify about what? She wasn’t a relevant witness. She wasn’t there. No, I mean, I don’t think the court would have allowed it. It’s not relevant testimony.

She wasn’t a witness. She had no information. I don’t think the court would have permitted it.

What are they gonna call her for, sympathy? “My son was a good boy,” which I’m sure he was a nice, decent, quiet guy. I’m sure that’s what he was. But no, it wouldn’t have been allowed.

MUSIC IN

SCHMIDT: It did cross Warner’s mind to try and call Kadiatou. That way, it would be up to the judge. He would have to allow it or not.

WARNER: First of all, that’s a little cowardly, because either you believe that it’s right or you don’t, or you’re trying to make a statement to the public.

SCHMIDT: But that could backfire.

WARNER: The jury may say, “What are they calling the mother for? She didn’t have anything to add to this other than the emotional. Oh, we like her. We think she’s wonderful. But why is he putting her through this, when she’s not really needed? Is he trying to get us to pity him or something? That he’s got a hard case. Or feel sorry for the, for the victim, who we do, but what are we supposed to do with that?”

SCHMIDT: So she never testified.

MUSIC OUT

SCHMIDT: Finally, after three weeks, the trial is coming to a close. And both sides will have one last chance to sway the jury.

JURY INSTRUCTIONS

COBOS: Closing arguments begin on February 22. Each of the defense attorneys stands up and says a final word about the officers. Here's the attorney for Sean Carroll.

ARCHIVED COURT TV

CARROLL ATTORNEY: These young men are not criminals, ladies and gentlemen. They're decent, they're honest, they're dedicated, they're not hardened, they're not cynical. But they're committed and honest police officers. They're ordinary working men who go to work in the morning and want to come home at night, safely home to see their wife and kids. And they come out to the streets where danger is fraught with every turn of the corner.

Sean Carroll is a decent, honest family man. You know that about him. He's a sensitive police officer. You saw him crying here on that witness stand. That wasn't artificial, ladies and gentlemen.

COBOS: Officer McMellon's lawyer takes the opportunity to remind the jury about what their true job is in the case.

MCMELLON ATTORNEY: Verdicts don't send messages. Verdicts decide cases. We ask you to decide this case. I ask you most humbly to decide this case on the law and the facts, as you know them and as you find them to be.

SCHMIDT: But the final closing argument goes to Eric Warner, the prosecutor.

WARNER: I said I would ask you to base your verdict on the evidence, and I do. And based on that evidence, I ask you to find these defendants guilty of their intentional, depraved reckless, unreasonable and unnecessary conduct that jeopardized the lives of Amadou Diallo's neighbors and destroyed Amadou Diallo's life.

MUSIC IN

COBOS: Then, Judge Teresi gives the jury instructions.

TERESI: The only issue for your determination is whether the people have proved any defendant guilty beyond a reasonable doubt. No other issue, no other institution, no other persons are on trial here.

COBOS: And this takes a very long time. Because there are 4 defendants, Judge Teresi has to read the instructions four different times.

[JURY INSTRUCTIONS]

TERESI: Again, I charge you to remember that you are to consider the guilt or innocence of each defendant separately in reaching your final decision.

SCHMIDT: This goes on for about three and a half hours. Judge Teresi still remembers what a marathon it was.

TERESI: I had no more fun having to read it for three and a half hours than people might have had to listen to it.

ARCHIVED COURT TV

TERESI: All right, ladies and gentlemen, I'm going to direct that you go to the jury room and deliberate in this case.

SCHMIDT: And with that the jury goes behind closed doors. And begins their deliberations.

A FAIR TRIAL?

COBOS: The jury spends three days deliberating. Then, they let Judge Teresi know they've reached a verdict.

MUSIC OUT

ARCHIVED COURT TV

TERESI: I've received your note that you've reached a verdict, is that true Madame Foreperson?

FOREPERSON: Yes, Your Honor.

TERESI: Would you please stand and the clerk will address you and take the verdict.

COBOS: The courtroom is completely silent.

Steven Brounstein, the lawyer for Kenneth Boss, remembers waiting for the verdict to be read.

BROUNSTEIN: One of the things I'll never forget, as long as I live, was Ken's father and mother were divorced. And my sense is it was a bit acrimonious. But oh god, when the jury came down, I think it was in the front row — it was his dad, his mom, and I think his sister, and they were holding hands as tight as you could ever see. And I said, "This is as heavy a moment as you can get." You could hear a pin drop.

It was as real as life ever gets, you know what I mean?

ARCHIVED COURT TV

CLERK: With respect to defendant Kenneth Boss, what was your verdict?

FOREPERSON: Not guilty.

COBOS: Court TV cameras zoom in on each officer's face as the verdicts are read. Kenneth Boss closes his eyes after the last "not guilty." He sighs.

CLERK: With respect to defendant Sean Carroll.

FOREPERSON: Not guilty.

SCHMIDT: Sean Carroll puts his head down. He purses his lips. A defense attorney next to him smiles.

CLERK: With respect to defendant Edward McMellon.

FOREPERSON: Not guilty.

SCHMIDT: Edward McMellon is expressionless during the whole thing.

CLERK: With respect to defendant Richard Murphy.

FOREPERSON: Not guilty.

SCHMIDT: And Richard Murphy is held by a man next to him while the verdict is read.

COBOS: After all four are found not guilty on all counts, they each hug their lawyers and each other. There are tears and pats on the back. The Court TV cameras aren't close enough to pick up what's being said, but there's relief in the air.

SCHMIDT: But not for Eric Warner, the prosecutor.

WARNER: And I don't take from the verdict, I don't take that personally. I can't take that personally.

It's why at the beginning, I try to set myself on a path that at the end I won't say, "I should've done this or I should've done that."

SCHMIDT: But he says he did his job.

WARNER: I think that, particularly, in the opening and in the summation, I presented the issues, I think fairly and in a way that was accessible to thinking people.

SCHMIDT: One of the people we talked to for this story thinks there is something that could have changed the verdict. That's Judge Teresi, the judge in this case.

SCHMIDT: Do you think that the trial would have been different had it taken place in the Bronx?

TERESI: I think so.

SCHMIDT: But he does agree with the decision to move the trial.

TERESI: Concerning the police and judging the police and judging their testimony are a lot different in the Bronx than they are in upstate New York. I think the Appellate Division, when they decided to transfer the case upstate, they made the right decision.

SCHMIDT: If the verdict had been different, Amadou's mom would have had the chance to speak in court.

That's because if the officers had been convicted, there would be a sentencing hearing. Kadiatou would have been able to give a victim impact statement.

COBOS: In the years after Amadou was killed, unarmed Black men have continued to be killed by police.

In May 2020, George Floyd was killed by Minneapolis police officer Derek Chauvin and the incident was caught on video.

ARCHIVED NEWS FOOTAGE

NEWS ANCHOR: This morning, a man is dead after being arrested by Minneapolis police and video has emerged online, with many people upset about how officers handled the situation.

COBOS: Protests erupted around the country and the world.

ARCHIVED FOOTAGE

PROTESTERS: I can't breathe! I can't breathe! I can't breathe!

COBOS: Chauvin was charged with murder.

ARCHIVED COURT FOOTAGE

JUDGE: Members of the jury, I understand you have a verdict.

We, the jury, in the above entitled manner as to count 1, unintentional second degree murder while committing a felony find the defendant guilty.

Verdict count 2, guilty.

Verdict count 3, guilty.

COBOS: He was found guilty for murdering Floyd, and sentenced to 21 years in prison. That conviction was significant for many people, including Amadou's mom.

MUSIC OUT

ARCHIVED PIX 11 FOOTAGE

KADIATOU: Unfortunately, we didn't get justice at that time.

Amadou never received justice. Consequently, many people have been killed since Amadou.

So, this verdict speaks to Amadou. This verdict speaks to many victims.

THEME MUSIC IN

CREDITS

COBOS: Shoe Leather is a production of the Columbia Graduate School of Journalism. This episode was reported, written and produced by me, Daniela Cobos.

SCHMIDT: And me, Ann Schmidt.

COBOS: Joanne Faryon is our executive producer and professor. Rachel Quester and Peter Leonard are our co-professors. Special thanks to Columbia Digital Libraries.

SCHMIDT: We'd also like to thank my husband, Ethan DuBois, for his invaluable coding skills that helped us get easier access to hundreds of hours of Court TV.

Shoe Leather's theme music – 'Squeegees' – is by Ben Lewis, Doron Zounes and Camille Miller, remixed by Peter Leonard.

Other music by Blue Dot Sessions. Our season five graphic was created by Indy Scholtens with help from Serena Balani.

Daniela Cobos (left) and Ann Schmidt (right) sitting in the car after arriving in Albany. (Photo by Daniela Cobos)