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The Real Reason Officers Are Rarely Convicted for Shooting Suspects

Juries know that cops are making split-second decisions and lack godlike powers of perception.

By David French — October 12, 2016

As so often happens, an allegedly clear-cut case of police brutality just got more complicated. Terrence Crutcher, an unarmed black man killed by a white female police officer in Tulsa, Okla., reportedly, according to the autopsy, had PCP in his system when he died — enough to make him acutely intoxicated. The fact that Crutcher was high on PCP doesn't by itself make the use of deadly force either appropriate or lawful, but it does have real effect in the courtroom. The chances of convicting Betty Shelby, the officer who fired the fatal shot, just decreased significantly.

Why? Because of the law. The public shout-fest over any given police shooting almost always asks exactly the wrong question: Was the police officer in actual, physical danger when he or she pulled the trigger? Moreover, that improper question is almost always asked against the background of an incomplete or inaccurate factual picture.

In the case of the Ferguson, Mo., shooting, activists believed that a police officer shot an unarmed black man (true) who had his hands up, peacefully surrendering (false). In the utterly horrifying case of Cleveland's Tamir Rice, protesters knew that police shot a child with a toy gun, and later they learned that the police shot him almost immediately after arriving on the scene. But it wasn't until much later that the public learned of the breakdown in communication that led officers to believe they were encountering not a kid with a toy but rather a "potential active shooter" in a public park.

Juries approach cases from a completely different perspective: Not only do they have access to facts most of the public never sees, but they are also asked to weigh those facts against a legal standard that asks not whether the police officer was "right" but instead whether the officer was "reasonable." In other words, when the officer used force, did he or she do so with the reasonable belief — to quote Oklahoma law — that deadly force was "necessary to protect himself or others from the infliction of serious bodily harm."

Juries are notoriously unwilling to second-guess officers' split-second judgments, but it's simply a mistake to assume that jury members do this out of blind faith. Any competent defense attorney, for example, will introduce copious evidence of the real and present danger from even unarmed men who are high on PCP. In the case of suspects armed with knives or with, say, guns at their sides, defense attorneys can introduce a great deal of evidence that even with guns pointed at a suspect, police are vulnerable if the suspect lashes out quickly enough.

Moreover — and this is important — the defense's job is to place the juror in the officer's shoes, not in God's shoes. When officers pulls the trigger, they don't do so with the benefit of multiple TV angles and frame-by-frame analysis. They do so only from their perspective, with the knowledge they have in the moment.

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In the Crutcher case, for example, activists have been focusing on helicopter footage that appears to show that Crutcher's driver-side window was rolled up.This could be a key piece of evidence, potentially debunking the officer's claim that she shot because the defendant appeared to be reaching inside the car. But the officer obviously wasn't in the helicopter. She wasn't viewing the suspect from that perspective, so it will become vital for the prosecution to show that her story isn't credible not just from helicopter footage but also from the perspective of an officer on the ground, in her location.

None of this means that there aren't cases where the "blue wall of silence" protects a crooked cop — or that there aren't circumstances in which combinations of racial prejudice and pro-police bias influence jurors to acquit people who should be held guilty. But it does mean that the statistics the Left loves to cite regarding the scarcity of police convictions are largely garbage. They simply don't wrestle with the fact that the vast majority of police shootings aren't premeditated or even impulsive acts of murderous rage, but rather tough calls made sometimes within seconds — with the officer's own life at stake.

This is precisely why some commentators who seek to decrease the number of police shootings call not so much for more vigorous prosecution, but for changed legal standards. They correctly perceive that so long as the law allows police to act on their own reason, then shootings will continue at roughly the same pace. So they want to draw more hard-and-fast rules that would, for example, require the use of nonlethal means of subduing a suspect or that would ban the use of deadly force unless it was proven "necessary," not merely *reasonable*.

To justify these changes, they will sometimes fall back on unprovable claims of "implicit bias" or "unconscious racism" to demand that the state override the officer's own reason. They know,

they just *know*, that any given suspect would be alive if they were white, not black, so they've got to take extraordinary steps to keep alleged (but unproven) bigots from pulling the trigger.

Yet the proposed legal changes neglect both the role of human nature in times of intense personal conflict and the inherent human right of self-defense enjoyed by all people, including police officers. Adjusting the balance of power in any given confrontation away from police officers and toward criminals is inherently destabilizing and places the tactical advantage squarely in the hands of the suspect. Requiring police officers to forsake their own reason in favor of a legal standard that essentially requires godlike powers of perception may well violate their constitutional rights.

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Moreover, activists often focus on police convictions to the exclusion of police discipline. It's one thing for departments to experiment with different use-of-force polices as a matter departmental practice — in essence, holding officers to a higher standard than the law requires. It's another thing entirely to send an officer to *prison* for failure to comply with that higher standard. There is a difference between bad cops, good cops who struggle to comply with bad policies, and criminals. Departments can experiment with different policies; they should not experiment with officers' rights to life and liberty.

Finally, it is a mistake to allow the aberrational to dictate the ordinary. Given the multiplicity of interactions between police and criminals in any given year, the number of truly outrageous police shootings is statistically insignificant. But advocates would ask us to change a million engagements for the sake of altering a handful of outcomes. There are costs to greater police restrictions, and the costs are largely born by the poorest and most vulnerable members of society.

Police officers are rarely convicted of murder or manslaughter not because of a grand, racist conspiracy, but because even when they're wrong, their decisions are typically reasonable. What more can we fairly ask of the police?

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