

The irreconcilable flaw in self-defense laws

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A jury's acquittal of Minnesota police officer Jeronimo Yanez was one more miscarriage of justice in the long line of police shootings of African-Americans. But instead of criticizing the judge, jury or prosecutors, let's consider how a defense like Yanez's could play out for a civilian defendant in an Alaska courtroom.

Last summer Yanez was indicted on one count of second-degree manslaughter and two counts of dangerous discharge of a firearm in the shooting of 32-year-old Philando Castile who had been pulled over for a routine traffic stop. After Yanez asked for his license and insurance, Castile informed the officer he was carrying a firearm. Yanez warned him three times not pull it out then shot and killed Castile. The event was recorded on the squad car's dashcam.

"I was able to see the firearm in Mr. Castile's hand," Yanez told the jury almost a year later. "And that's when I engaged him. I had no other choice."

There's no evidence that's true. The dashcam video doesn't show whether Castile reached for the gun, his wallet, or if he was trying to unbuckle his seat belt. More importantly, Yanez never definitively claimed he saw the gun in statements he made right after the shooting and the next day.

"I looked and saw something in his hand" Yanez told agents from state's Bureau of Criminal Apprehension (BCA). "It was dark inside the vehicle. I was trying to fumble my way through under stress to look and see what it was to make sure what I was seeing. But I wasn't given enough time."

Yanez had a superior advantage over Castile. Like most officers, he was wearing a bulletproof vest. He was standing beside the vehicle door looking down on a man sitting in the driver's seat with one hand on the steering wheel. And still, only eight seconds after Castile told him he had a gun, Yanez went from being totally calm to so terrified that he fired seven shots.

All the training in the world can't prepare anyone to know which way their adrenaline will run when confronted by an unanticipated threat, real or imagined. Yanez's prior employment as a security guard or immigration specialist didn't help him. So it's conceivable that, as he told the BCA agents and the jury, he really did fear for his life.

But that's not a justification for shooting Castile.

"As public servants, police officers should be held to a higher standard," wrote Trevor Burrus, a research fellow at the Cato Institute's Center for Constitutional Studies, following a controversial police killing in 2014. "An officer should only be allowed to use lethal force if there is compelling evidence that force is needed to stop an imminent threat to himself or public safety and reasonable alternatives are unavailable. Of course they must be given freedom to protect

themselves and others in dangerous situations. While officers' snap judgments in those situations should be considered, they shouldn't always be validated."

I couldn't agree more. That's the standard Yanez should have been held to and quite possibly why he falsely testified in court that he saw Castile's gun.

But more important, the case points out an irreconcilable flaw in laws, like Alaska's, that allow the use of deadly force when a "person reasonably believes" its use "is necessary for self-defense." It's not only impossible to objectively define the word reasonable. As applied in Yanez's case and others like it, what legally stands up as a reasonable fear flips our much-cherished presumption of innocence upside-down. The constitutional guarantee of a courtroom trial was preempted by the fatal presumption of guilt on the street.

It's even worse in Alaska and 27 other states that have stand-your-ground laws giving civilians the same ambiguous legal right to use deadly force for self-defense. They turn Burrus' higher standard argument around to suggest people can shoot to kill without compelling evidence of an imminent threat. And their snap judgment when confronted by a perceived threat should almost always be accepted as reasonable by a jury.

That doesn't ensure the shooter will evade conviction and jail time. But as it was for Castile and others like him, it will still be an unjust verdict for the person at the other end of the gun.