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# When unarmed men reach for their waistbands

By Radley Balko

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A man stands next to a photo of Oscar Grant during the protest of the upcoming release of former transit officer Johannes Mehserle from a Los Angeles prison, in Oakland, California, June 12, 2011. Mehserle, a white former policeman, was convicted of involuntary manslaughter when he shot and killed an unarmed black man, Oscar Grant, at the Fruitvale BART station in 2009. (REUTERS/Kim White)

A panel from the U.S. Court of Appeals for the Ninth Circuit has reinstated a lawsuit filed by the family of Caesar Cruz, who was shot and killed by Anaheim, California, police in 2009 in the parking lot of a Walmart. Judge Alex Kozinski has written some biting opinions on police and prosecutor abuses lately, and his opinion in this case is no exception

Nobody likes a game of “he said, she said,” but far worse is the game of “we said, he’s dead.” Sadly, this is too often what we face in police shooting cases like this one . . .

The officers noticed that Cruz’s vehicle had a broken tail light, so they executed a traffic stop. After Cruz pulled into a Walmart parking lot, the police surrounded him with their vehicles. But Cruz attempted to escape, backing his SUV into one of the marked patrol cars in the process. Cruz eventually stopped, and the officers got out of their vehicles with weapons drawn.

Cruz opened his door, and the police shouted at him to get on the ground as he was emerging from the vehicle. According to four of the officers, he ignored their commands and instead reached for the waistband of his pants. Fearing that he was reaching for a gun, all five officers opened fire. They fired about twenty shots in two to three seconds . . .

To decide this case a jury would have to answer just one simple question: Did the police see Cruz reach for his waistband? If they did, they were entitled to shoot; if they didn’t, they weren’t. But for a judge ruling on the officers’ motion for summary judgment, this translates to a different question: Could any reasonable jury find it more

likely than not that Cruz didn't reach for his waistband? In ruling for the officers, the district court answered this question "No." The evidence it relied on in reaching this conclusion—indeed, the only evidence that suggests this is what happened—is the testimony of the officers, four of whom say they saw Cruz make the fateful reach.

In this case, there's circumstantial evidence that could give a reasonable jury pause. Most obvious is the fact that Cruz didn't have a gun on him, so why would he have reached for his waistband? Cruz probably saw that he was surrounded by officers with guns drawn. In that circumstance, it would have been foolish—but not wholly implausible—for him to have tried to fast-draw his weapon in an attempt to shoot his way out. But for him to make such a gesture when no gun is there makes no sense whatsoever.

A jury may doubt that Cruz did this. Of course, a jury could reach the opposite conclusion. It might believe that Cruz thought he had the gun there, or maybe he had a death wish, or perhaps his pants were falling down at the worst possible moment. But the jury could also reasonably conclude that the officers lied. In reaching that conclusion, the jury might find relevant the uncontroverted evidence that Officer Linn, one of Cruz's shooters, recited the exact same explanation when he shot

and killed another unarmed man, David Raya, two years later under very similar circumstances.

Perhaps the most curious similarity: According to the officers who shot the two unarmed men, both reached for their waistbands while the police had their guns trained on them. (One noteworthy difference: Raya was shot in the back because he was running away from Officer Linn when Linn saw him reach for his waistband.) “They both reached for the gun” might be a plausible defense from officers in the line of duty. “They both reached for no gun” sounds more like a song-and-dance.

Back in March I noted a recent series of police shootings in the San Diego area in which the cops also claimed an unarmed man was reaching for his waistband. A September 2011 investigation by the Los Angeles Times found that in half the cases in which police shot at someone they claimed was reaching for his waistband, the suspect was unarmed. (There was another incident in Long Beach, California, in April.) A 2013 Houston Chronicle investigation found multiple incidents there. There have been other recent “unarmed man reaches for his waistband” shootings in Pierce County, Washington; Pasadena, California; and Portland, Oregon. It’s also the story we heard from BART Officer Johannes Mehserle after he shot and killed Oscar Grant in an Oakland subway station.

I doubt that these cops are gunning people down in cold blood, then using the waistband excuse to justify their bloodlust. It’s likely more a



product of inappropriate training. A few years ago, a guy who trains police in the use of lethal force told me that he had grown quite concerned about the direction that training has taken in recent years. He said that police departments are increasingly eschewing training that emphasizes deescalation and conflict resolution for classes that overly emphasize the dangers of the job, teach cops to view every citizen as a potential threat, and focus most of the training on how to justify their actions after the fact to avoid disciplinary action and lawsuits. Other police officials have since expressed similar concerns. This boilerplate language we sometimes see in police reports about unarmed suspects reaching for their waistbands or making “furtive gestures” suggests that this sort of training is having an impact.

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Radley Balko blogs about criminal justice, the drug war and civil liberties for The Washington Post. He is the author of the book "Rise of the Warrior Cop: The Militarization of America's Police Forces."  Follow @radleybalko

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