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INFORMED AND LETHAL

Confirmation bias, on steroids

For Police Issues by Julius “Jay” Wachtel. In Minnesota, to return a verdict of guilty of [murder in the third degree](#) – its least severe form – requires proof that the defendant had a “depraved mind”. Here is the statute’s present form:

Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

“Depraved mind” is an expansive, highly charged term for a package of personality characteristics that supposedly lead to noxious behavior. Here is how Minnesota’s high court defined it [nearly a half-century ago](#):

A mind which has become inflamed by emotions, disappointments, and hurt to such degree that it ceases to care for human life and safety is a depraved mind.

Proof of the defendant’s depravity was one of the challenges faced by Minneapolis prosecutors during [the recent trial](#) of former city police officer Mohamed Noor. On July 15, 2017 Noor, 32, a two-year veteran of the force (and of police work) was riding in the passenger seat of a patrol car driven by officer Matthew Harrity, 25, with one year on the job. About midnight they were dispatched to a pair of 911 calls placed by Justine Rusczyk, 40, who reported hearing noises that suggested a sexual assault was taking place in the alley behind her residence.

As officers Noor and Harrity cruised slowly through the narrow, dark passageway they saw nothing out of the ordinary. [Officer Harrity would testify](#) that they were about to clear the call when he heard a “thump” and a “murmur” and observed that someone had approached his side of the patrol car. Fearing an ambush, he pulled his handgun and pointed it towards the floorboard. But he didn’t shoot.

His senior partner, officer Noor, reacted differently. At his trial for murder and manslaughter, [Noor testified](#) that he heard a “bang.” He then heard his partner utter “Oh, Jesus” and saw him draw his gun. Officer Noor said he observed a woman next to their car with a raised arm. Interpreting her actions as a lethal threat, officer Noor pulled his gun and fired once. It turned out to be Rusczyk, the caller. She had

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apparently been seeking to personally contact the officers, something that no one had foreseen. (Click [here](#) for the detailed account that officer Harrity gave to State investigators.)

Ruszczyk's wound proved fatal. In March 2018 officer Noor was charged with [third-degree murder](#) and [second-degree \(culpably negligent\) manslaughter](#) and resigned from the force. Several months later prosecutors added an additional charge of [second-degree \(intentional\) murder](#).

Noor was brought to trial on April 1. On April 30, after one day of deliberation, [jurors found him guilty](#) of manslaughter and third-degree murder but acquitted him of second-degree murder. Their decision to convict may have been influenced, in part, by prosecutors' contentions that the alleged "thump" and other noises suggestive of a possible ambush were made up after the fact, and that in any event they were not made by Ruszczyk, as her fingerprints were not found on the police car.

Three use of force experts testified. Two were called by the prosecution; as one might expect, both concluded that Noor acted unreasonably. One, an ex-police chief, said that a citizen "has every right to go out [to the police vehicle] and be sure that her community is safe." In contrast, an expert called by the defense stated that "if you wait to see the gun appear, you're going to be shot with it."

Citizen rights aside, approaching a police car in the dead of night seems like a clearly unwise move. But arguing that it justifies being shot dead is clearly over the top. No democratic society could possibly endorse what took place. In the end, Noor's fate was probably sealed by [jury instructions](#) that directed the panel to compare what he did to what a "reasonable" cop should do:

Giving due regard for the pressures faced by peace officers, you must decide whether the officer's actions were objectively reasonable in the light of the totality of the facts and circumstances confronting the officer, *without regard to the officer's own state of mind, intention or motivation*. [emphasis added]

In this case, that "reasonable" officer was sitting right next to Noor. Although officer Harrity also considered the unknown woman a "threat", [he testified that he held his fire](#) because he had neither sufficiently analyzed things nor observed the person's hands.

But *murder*? [Prior posts](#) have remarked on an apparent inclination to overcharge officers accused of using excessive force so as to make it more likely that jurors will convict on *something*. That, according to some legal commenters, may be what [drove Noor's prosecutors](#) to prefer murder charges:

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You throw a lot of pellets up in the air and you don't care which one brings down the bird. Obviously you would always like to get (a conviction on) the highest charge but you want to leave at the end of the day with some conviction.

Noor testified that he saw the woman at whom he fired. Still, his reaction seems by any measure instantaneous. He knew nothing about his human target nor did he see a weapon. That distinguishes this incident from that other notorious Minnesota example, the July 6, 2016 [shooting of Philando Castile](#) by Falcon Heights officer Jeronimo Yanez. Yanez stopped Castile's vehicle because he supposedly resembled an armed robber, then fatally shot him when he appeared to reach for a gun (there was one, but Castile was licensed to have it). Yanez was subsequently [found innocent on all charges](#), including reckless discharge and felony manslaughter.

Excluding accidental shootings, such as [drawing one's gun instead of a Taser](#), or involuntarily squeezing off a round [because of a startling noise](#), our [Use of Force](#) and [Strategy and Tactics](#) sections offer many examples of purposeful yet misguided uses of lethal force (for a few see "Related Posts" below.) If one ranked these episodes according to how much accurate information an officer had before discharging their weapon, Noor's example would probably be at the bottom.

Several others would fall close. One is the September, 2016 encounter between Tulsa police and [Terence Crutcher](#), a middle-aged parolee and substance abuser:

Crutcher, 40, had abandoned his truck in the middle of the road and was walking around disoriented. He ignored the first officer on the scene, Betty Jo Shelby, and as backup arrived he returned to his vehicle and reportedly reached in. Officer Shelby, who is white, fired her pistol and another cop discharged his Taser. Crutcher, who was black, was fatally wounded. No gun was found.

[Officer Shelby was charged](#) with first-degree manslaughter. True enough, she acted precipitously and as it turns out, incorrectly. Yet in this uncertain world, officers need some wiggle room. As Noor's expert suggested, delaying can cost a cop's life. It was that quandary that likely moved the jury foreperson in Shelby's trial to draft an [extraordinary public letter](#) to explain what the panel knew would be a most controversial acquittal.

In this imperfect world, officers rarely have complete, accurate information at hand, and what's known or observed isn't always helpful. Indeed, it can poison the atmosphere and lead officers astray. Mr. Crutcher's criminal past and his bizarre, uncooperative behavior made it easy to believe that he would be armed. As for the killing of Ms. Ruszczuk, officer Harrity pulled his gun but didn't fire. Still, his frightened reaction to her presence affected officer Noor, [who would testify that he acted to save his partner](#).

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Considered from this perspective, both shootings seem examples of [confirmation bias](#), on steroids. Their clashing legal outcomes might also reflect an understandable tendency by jurors in such matters to focus their search for possibly exculpatory evidence on the suspects, of whom by the time of trial usually a lot is known.

What can be done to help avoid the needless use of lethal force? Here are some ideas:

- In [“Working Scared”](#) we discussed personality characteristics such as impulsivity, which some officers have in abundance, and risk tolerance, which some seem to altogether lack. Attending to these concerns during selection, training and evaluation seems clearly vital.
- What happens in police academies is important. Officer safety lectures and training scenarios must be attuned to the realities of the workplace, not left to the imagination of drill instructors. Scaring inexperienced recruits into a “draw first and ask questions later” mentality - essentially [the approach that Noor described in his testimony](#) - is part of the problem.
- We’ve frequently mentioned, most recently in [“Speed Kills,”](#) that procedural antidotes such as keeping one’s distance, taking cover and de-escalating *do* exist. Of course, in the unpredictable environment of policing, such remedies aren’t always effective or applicable. So here’s a splendid opportunity for tactical geniuses to devise alternatives.
- Information is frequently advanced as a remedy. [We’ve done it ourselves](#); for example, by encouraging agencies to keep records on mentally ill and other problematic characters so that dispatchers can inform patrol. But as we warn in this post, knowing more can actually make things worse.

So we’re back to our favorite “square one.” Let’s [self-plagiarize](#):

Policing is an imperfect enterprise conducted by fallible humans in unpredictable, often hostile environments. Limited resources, gaps in information, questionable tactics and the personal idiosyncrasies of cops and citizens have conspired to yield horrific outcomes. Still, countless cop-citizen encounters occur every day. Many could have turned out [poorly] but, thanks to very craftsmanlike police work and considerable risk-taking, they’re resolved peacefully.

In a democracy, police officers need to accept more risk than one would prefer. And yes, that means some will get hurt, and that others will die. So where should they set their

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limits? We can't expect them to divine a solution. Laws and regulations certainly haven't done the job, and probably can't. It may be distasteful, it may be impolite, but if we wish to avoid sending any more cops to prison, it's a discussion in which police and society must promptly engage.