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A REASON? OR JUST AN EXCUSE?

Figuring out why officers kill persons “armed” with a cell phone

By Julius (Jay) Wachtel. “As soon as they did the command, they started shooting. They said ‘put your hands up, gun’ and then they just let loose on my nephew.” That’s how [Stephon Clark’s aunt](#) reacted to body-cam footage depicting two Sacramento officers – one white, the other black – as they unleash a barrage of twenty rounds at a 22-year old black man whom they encountered at the rear porch of what turned out to be his grandmother’s house, where he was staying.

Why did the officers fire? According to [an official news release](#), they thought Clark was threatening them with a gun:

Officers pursued the suspect and located him in the backyard of the residence. The suspect turned and advanced towards the officers while holding an object which was extended in front of him. The officers believed the suspect was pointing a firearm at them. Fearing for their safety, the officers fired their duty weapons striking the suspect multiple times.

Clark was struck eight times. [According to the medical examiner](#) hired by his family, he was probably first hit on the side. That impact likely spun him around, explaining why he wound up with six entrance wounds in the back and (as he fell) one on the leg.

Problem is, Clark wasn’t armed. Once officers approached his body and rolled him over they found a cell phone on the ground.

Police became involved when a resident called 911 to complain that someone was going into back yards and breaking the windows of parked cars. (A series of broken car windows were later found in the area.) Deputies in a helicopter reportedly observed Clark break the rear glass door of a residence. Their video depicts Clark peering into the back of a car parked in a driveway. He then jumped a fence and entered the yard of the home where he was cornered.

As often happens, officers didn’t know whom they were chasing. Had they been informed, their concerns would have likely been elevated. In 2014, one year after graduating from high school, [Clark was convicted of robbery](#) and received five years probation. An estranged father of two, he had also collected convictions for a misdemeanor prostitution-related offense and “battery of a cohabitant.”

California penal law (click [here](#) and [here](#)) lets peace officers use “reasonable force,” including lethal force, to arrest persons whom they have “reasonable cause to believe” committed a crime, or when necessary to discharge “any other legal duty.” Because of its centrality to the [Fourth Amendment](#), the parameters of “reasonable” police conduct have been left for the Federal courts to define. In [Graham v. Connor](#) the Supreme Court held that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” What’s more, “the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” (For a recent decision that emphasizes the slack cops might need see [Kisela v. Hughes](#), summarized [here](#).)

Considering the complexities of what the officers faced – which, not incidentally, were greatly exacerbated by Clark’s conduct and flight – it seems highly unlikely they will be held legally accountable. But concerns that a life might have been spared had they exercised better judgment or deployed better tactics are not easily dismissed.

Use of force experts have offered a variety of opinions, mostly in support. In interviews with the [Sacramento Bee](#) and the [Los Angeles Times](#) a current cop and legal advisor found the shooting reasonable, as both officers made contemporaneous, recorded comments reflecting their belief that Clark was armed. Emphasizing the split-second nature of what took place, he favored giving the cops a complete pass: “If you don’t give officers that benefit of the doubt, if you don’t give them that shield, you’re not going to have any officers out there.” [Another expert who viewed the video agreed](#) that the officers “appear to legitimately believe they were in danger.”

At the same time, precisely *why* they thought so troubled Geoffrey Alpert, a well-known academic. [In one interview](#) he pointed out that the helicopter crew mentioned that Clark only had a toolbar. [In another](#) he suggested that the officers brought on the shooting by “the yelling of the word ‘gun’.”

Officer tactics drew less comment. A law professor and former cop [said he was troubled](#) by the final moments of the encounter, when the officers darted to and from positions of cover while yelling to each other and at Clark. “The question is how well did officers see Mr. Clark? Another question is whether officers who had some cover could have maintained their position of relative safety until they could assess the situation.”

Your blogger thinks that’s a valid point. Had the officers paused to gather information (say, by getting back-up units to surround the house while the helicopter brightly illuminates the patio) they might have discovered that Clark was only “packing” an I-

Phone. Of course, one could speculate endlessly. A key decision-maker, Sacramento's mayor, [hedged his bets](#). "Based on the videos alone, I cannot second guess the split-second decisions of our officers and I'm not going to do that." He said he's waiting for more information, and one can't really blame him. After all, anyone who busts windows and prowls backyards poses an obvious risk, and the officers didn't know that the occupants of the residence where they cornered Clark were his relatives.

Not weighing in may be prudent, but it doesn't make the perplexing issues that beset everyday policing go away. As cops well know, [ill-informed "split-second" decisions](#) are the bane of patrol work. Here are a few cell-phone related examples from prior posts:

- [Two patrol officers](#) heard a loud noise and spotted a 27-year old pedestrian. He seemed to be fiddling with something. The cops pulled up and ordered him to halt. He instead approached them, reached into his waistband and brought something out. An officer shot him dead. All that he had was a cell phone. He was also learning disabled.
- [At the end of a wild freeway chase](#) a youthful driver (he had dialed 911 and warned that he was armed) pointed at officers as though he had a gun. Their gunfire killed him. It turned out that all the troubled nineteen-year old had was a cell phone.
- [Officers chased a drive-by shooting suspect](#) on foot, then shot him multiple times when he suddenly turned towards them. All he had was a cell phone. Left a near-paraplegic, he was eventually convicted of the drive-by. After being paroled he sued and was awarded \$5.7 million.
- [Two deputies looking for robbery suspects](#) approached a pair of candidates. One ran off and a deputy gave chase. At some point the suspect made a motion that the deputy considered threatening. The officer fired three times, fatally wounding the man. All the suspect had was a cell phone and street drugs. No, he wasn't the robber.
- [Deputies responded to a 911 call](#) from a woman who said she had been threatened with a gun. They pulled over a parolee leaving the area. He ran off and was chased on foot. At some point the man allegedly pointed an object at deputies and was shot and killed. That object turned out to be a cell phone. A loaded gun was found in the suspect's car, some distance away.

Back to the shooting of Mr. Clark. We'd like to offer an observation about the tactical approach. Officers patrolling lower-income, higher-crime areas such as where Clark lived often have good reason to be wary. (For the *Sacramento Bee's* list of fatal officer-involved incidents since 2016, click [here](#).) As the videos show, officers pursued Clark using pistol-mounted flashlights. When a chase is on and the adrenaline is flowing these combination "tools", which essentially transform suspects into targets, might lead officers to fire impulsively or with insufficient provocation.

Prior posts emphasize that [risk-tolerance](#) is intrinsic to policing:

Cops take chances every hour of every day, from walking up to cars during a traffic stop, to wrestling with drunks and the mentally ill, to tracking a citizen's hands to make sure that they're pulling out a wallet instead of a gun. If cops insisted on absolute safety they'd be leaving behind a trail of dead civilians at the end of every watch.

To prevent tragic misconceptions tacticians suggest that officers strive to [slow things down and make time](#) for supervisors and backup to arrive. The cops who killed Clark are reportedly young, with only a couple of years on the job. Examples in "[Working Scared](#)" illustrate the drawbacks of youth and inexperience. How one wishes that a plodding, experienced old-timer with lots of mistakes under his or her belt (yes, mistakes) had been present during the encounter!

Cops know that the decision-making calculus can be very complex. So complex, in fact, that Sacramento's new police chief [said he was now considering policies](#) that limit when officers can give chase. Yet he worried that such rules would be unavoidably saddled with perplexing implications:

I'm perfectly willing to have that conversation, but we also need to have (discussions about) what are the consequences of not pursuing people, because that is what we have always done. When an officer sees a suspect that runs from them, we chase them. That is what we do.

After all, if the home where Clark wound up was yours or mine we'd feel pretty miffed had police decided to back off. And if he broke in... Still, Clark *was* unarmed. However one might parse the officers' response, that reality is a burden that they as well as their department, community and nation will bear for a very long time.

Finally, we should point out that the issue goes well beyond mistaking cell phones for guns. While phones are the only object of size that one typically carries around, sometimes folks have other things in hand that *aren't* a gun. Like the silver smoking

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pipe that Saheed Vassell, a mentally disturbed 35-year old New York City resident [was pointing at passers-by](#) on the street. Officers shot and killed him yesterday.