

Supreme Court reignites Robbie Tolan police shooting case

Yamiche Alcindor, USA TODAY Published 7:00 a.m. ET May 24, 2014



(Photo: Toni Wilson)

A U.S. Supreme Court ruling about a man shot by a Texas police officer is being hailed as a victory by some who think the shooting was racially motivated but as a simple procedural issue by others.

Last week, justices--in a unanimous decision--ordered the 5th U.S. Circuit Court of Appeals to reconsider a lawsuit filed by Robbie Tolan, a black man who was shot in front of his parents at the family's home in Bellaire, Texas. Tolan says the ruling means he will have a chance to argue before a jury that Sgt. Jeffrey Cotton, a white officer, racially profiled him and mistreated Tolan's family because of their races. However, an attorney for Cotton and the city says the case has nothing to do with race and will likely be dismissed by the appeals court without a jury trial.

"It's nothing more than racial profiling," says Robbie Tolan, 28, of the night when he was shot on the front porch of his home.

It's a claim that Tolan, the son of former major league baseball player, Bobby Tolan, and his family fiercely support. It's also one that has several experts pointing to the case as yet another example of the dangers of racial discrimination and stereotypes.

On Dec. 31, 2008 at about 2 a.m., Bellaire Police Officer John Edwards, saw Tolan and his cousin, Anthony Cooper, driving a black Nissan sports utility vehicle. Edwards decided to run the vehicle's license plate number. However, the officer put in the wrong plate number and mistakenly pulled up a stolen car.

Edwards, believing the vehicle was stolen, got out of his patrol car and pointed his gun at the two men. While Tolan and Cooper laid on the ground denying the accusation, Tolan's mother, Marian Tolan, and his father came out of their home. The parents, in their pajamas, told Edwards the car was a family vehicle. But, Edwards radioed for backup and told Tolan's mother to stand against her garage.

What happened next is a point of contention.

Robbie Tolan and his parents say Edwards pushed Marian Tolan against her garage and that her son was shot by Cotton as the young man, on his knees, protested the handling of his mother.

Edwards and Cotton say Robbie Tolan was shot while on his feet as his mother was being escorted to the garage.

What is clear is that Cotton was on the scene for about 40 seconds before firing three times at Robbie Tolan. Only one bullet--which remains lodged in his liver--hit him.

In 2010, a jury acquitted Cotton of any criminal wrongdoing. Still, Tolan's family believes the city and Cotton should be held civilly liable.

"They (officers) would have given a white family respect on their own property," Marian Tolan says. "The officers made the mistake and we have to pay for it."

Earlier judgements dismissed the Tolan family's civil lawsuit and forced them to pay more than \$7,000 in legal fees for Cotton and the city, the mother says. Robbie Tolan's injury has also prevented him from following his father into major league baseball, the family says.

Benjamin Crump, an attorney for Trayvon Martin's parents, recently began representing the Tolan family as well.

"All this family wants is their day in court," Crump says. "We have to send a message to police when they act in this outrageous conduct. The law has to protect citizens whether they are black, white or Hispanic."

He added that the U.S. Supreme Court decision was incredibly historic because the court does not often agree to hear cases and rarely rules against police officers.

Crump says the justices' ruling likely means the Tolan family will be able to explain their ordeal to a jury. "If this case can't go to a jury, what case can?," he says.

The U.S. Supreme Court ruling orders the lower court to take into account the Tolan family's claims.

"(The 5th U.S. Circuit Court of Appeals) should have acknowledged and credited Tolan's evidence with regard to the lighting, his mother's demeanor, whether he shouted words that were an overt threat, and his positioning during the shooting," the ruling says.

The ruling adds however that other facts could be weighed and that Cotton's actions may not have violated any laws.

William Helfand, the attorney for Cotton and the city of Bellaire, says the Supreme Court ruling is about taking more things into consideration. He is adamant that the case remains dismissed and that the lower courts' rulings show that race was not a factor in the shooting.

He points to this line from a district court ruling: "The plaintiffs have alleged their personal beliefs that race was a factor in the adverse actions taken against them by the defendants in this case, but such a personal belief, unsubstantiated, cannot support their claim of denial of equal protection of the laws."

The judge there went on to say that there was no evidence that Cotton or Edwards knew the race of Tolan and his family or that they acted differently because of race.

Helfand says because of Tolan's position and the darkness that night, Cotton couldn't tell the race of anyone involved before he fired. The lawyer added that the Tolan family is not easily recognizable as black.

"You can't tell just by looking at him what his race is," Helfand says of Robbie Tolan. "Long before this incident, I thought Bobby Tolan was a great baseball player for the Cincinnati Reds. I always thought Bobby Tolan was Hispanic."

Meanwhile, several legal experts say the Supreme Court's actions are rare and that the case could be before a jury within a year or two.

"Tolan may ultimately lose the case however this is still a victory (for Tolan) because the summary judgements by the lower courts represented such one-sided deference to the police claims," says Rogers Smith, a political science professor at the University of Pennsylvania. "It was clear the police had made a mistake in thinking the car was stolen and the police ended up shooting an innocent young man."

Robbie Tolan takes it one step further saying he and other black men--including Trayvon Martin and Jordan Davis --faced similar racial abuse.

Jody Armour, a professor at the University of Southern California Law School, agrees.

"All these cases turn on how reasonable the perception was that a black young man posed an imminent threat of harm," Armour says. "That's always the question."

Mark Anthony Neal, an African & African-American Studies professor at Duke University, says the answer to that question is always steeped in the reality that black men driving cars in nice neighbors can lead to racial profiling.

"The law wants to deny the racial reality of these cases," he says. "It wants to suppress the racial dynamics of violence against black bodies because once race is on the table, it changes how everybody reads these cases. What the Supreme Court essentially has said--without saying it very blatantly--is that well no you can't suppress race in this case."

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