

# Bellaire cop says he shot young man in self-defense

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HOUSTON --

It's been more than a year since Bellaire resident Robbie Tolan was shot three times during a confrontation with Bellaire police. On Friday, the man who pulled the trigger, Bellaire Police Sergeant Jeffrey Cotton, took the stand to tell his side of the story.

Cotton's voice began to crackle as he described Robbie Tolan's reaction after he shot him. He explained to the jury that he'd never been involved in a shooting, until the incident with Tolan more than 15 months ago.

On the stand, Cotton testified that when he pulled up to the Tolan's home in the early morning hours of December 31 2008, he believed Tolan, who was lying face down on the porch, and his cousin were two auto theft suspects caught after running away from a stolen vehicle.

"I drew my weapon and ran up to officer Edwards. This is a felony arrest. It would be normal to hold suspects at gunpoint," Cotton said.

By that time, Robert Tolan Sr. and his wife, Marian, had come outside to see what was happening. Cotton told jurors Mrs. Tolan identified herself as the homeowner and was very upset. He said he wanted to take her over to the garage for her own safety.

"She was doing a lot of talking and not a lot of listening," said Cotton.

He said he didn't realize that Marian Tolan was Robbie's mother until he shoved her against the garage door.

"I heard him yell. I turned and looked as he was getting up," Cotton said. "I pushed her, took a step away from her, faced him and drew my weapon."

Cotton said it was difficult to see because a tree was casting a shadow on the front porch where Robbie Tolan was. Cotton thought Tolan was reaching for a weapon. He told the jury believed the only option was to fight back.

Cotton's voice cracked as he recounted for the jury those frantic moments right after the shooting.

"I began to put pressure on his wound with my bare hands. I was more worried about him at that point even though I had blood all over my hands," Cotton said.

In addition, Cotton said he prayed for Tolan after he shot him.

Late Friday afternoon, Cotton was cross-examined by the prosecution and claimed that he shot Tolan in self-defense.

"We're trained that if you wait until you see the weapon before you react, you will get shot," said Cotton.

The defense asked, "Why did you shoot Robbie Tolan?" To which Cotton replied, "I thought he was going to shoot me."

During cross-examination, Cotton admitted he never verified the initial information Edwards put out over the radio.

"Officer Edwards came over to me and told me the car was not stolen," he said.

When asked how he felt when he heard that, Cotton said, "My heart dropped."

Cotton is on paid leave from the Bellaire Police Department and if convicted, could face 5 to 99 years in prison, in addition to fines.

Testimony in this case will resume on Monday morning.

### **Defense presented its case early Friday**

Today is the fourth day in the trial of a Bellaire police officer charged with assault by a public servant. Sgt. Jeff Cotton is accused of shooting Bellaire resident Robbie Tolan in the early morning hours of New Year's Eve in 2008.

Two Bellaire police dispatchers, an internal affairs investigator and the former supervisor of the officer accused of shooting and wounding an unarmed man testified in court today.

The Bellaire police lieutenant who heads up internal affairs told the jury that Sergeant Jeffrey Cotton has a reputation for being truthful.

Zell Woods, a former Bellaire police officer who now works for DPS, also testified that Cotton was truthful. Woods was Cotton's supervisor for a year and a half.

The two police dispatchers who were working at the time Robbie Tolan was shot said Cotton got on the police radio and urged them to get EMS to step it up. Monica Barron told the jury "it appeared EMS was not getting there fast enough for them."

The state took two days to present its side of the case and today, the defense called a DA investigator who was on the scene just after the shooting. His job was to take photos and measurements and conduct interviews with the people involved to assist prosecutors in their part of the criminal justice process.

He started by describing how he built a detailed timeline of those early morning events, second by second, using police car video, cell phone calls and dispatch records, hoping to create a timeline of just how quickly this shooting took place.

### **Robbie Tolan told his side of the story**

Late Thursday afternoon, Robbie Tolan recounted for the jury the frustration and anger he felt towards police after he was wrongly accused of driving a stolen vehicle.

It was a moment almost two years in the making and for Tolan. Explaining to the jury what happened the night he was shot outside his Bellaire home was like having a huge weight lifted off his shoulders.

"I'm relieved this is over. For me, at least," he said.

Bellaire police pulled over Tolan, believing he was an auto theft suspect. As he was lying face down on the ground, Tolan admitted to being angry at police after he repeatedly told them they were making a huge mistake. He said he reached his breaking point when he saw Sgt. Cotton push his mother against the garage.

"I pushed myself to my knees, said, 'Get your hands off my mom,' and then he shot me," said Robbie Tolan.

He said it all happened so fast.

"I was gasping for air. I couldn't do anything. I blinked and I was on the ground," Tolan said.

Defense attorneys say Cotton shot him because he believed he was about to be shot by an auto theft suspect.

"I thought he was drawing a weapon," said Cotton on a videotaped interview.

Jurors saw the tape which showed Cotton talking to investigators about what happened. Cotton was overheard saying, "I couldn't believe he was getting up. I kept thinking to myself, don't do it. Don't do it. "

Both Cotton and Tolan agreed that the officer discovered Tolan was unarmed by rolling him onto his back after he shot him. The bullet is still lodged in his liver. More than 15 months later, Tolan remembers the pain as if it were yesterday.

"The burning, the singing, the throbbing. I couldn't breathe," he said.

Tolan spent three weeks in the hospital. He is still living with his aunt in Missouri City. He says as far as he's concerned, his home in Bellaire is no longer a home, but a crime scene.

### **Victim's mother, father took the stand**

Earlier Thursday, both Tolan's mother and father testified in the trial.

The victim's mother, Marian Tolan, told the jury she was in disbelief when Bellaire police stopped her son and her nephew in front of her home, accusing them of driving a stolen SUV. Marian Tolan said she repeatedly told the officer it was all mistake, but claims he wouldn't listen.

Marian Tolan testified how the situation outside her home in the early morning hours of December 31, 2008, went from bad to worse in a matter of seconds. She told the jury about the bruises she received after Cotton grabbed her by the arm and threw her up against the garage.

The victim's father, Robert Tolan Sr., also took the stand Thursday. Tolan Sr., a retired professional baseball player, told the jury he rushed outside after hearing noises and arguing. He told jurors police refused to listen to him or his wife after they rushed out of the house and repeatedly told the officers, "This is my son. This is my house. This is my car. We live here."

Tolan Sr. said another officer drew his weapon and directed him over to the Suburban parked in the couple's driveway. He told the jury, "Two to three seconds later I heard a bang. A second or two after that I heard a gunshot."

Tolan Sr. explained that the bang he heard was the sound of his wife being thrown up against the garage by a police officer. He said after his son had been shot, Tolan Sr. heard his wife say, "Call on Jesus. Pray Robert. Call on the Lord."

"We've heard a lot from the Bellaire Police Department. We trust that the jury will hear all of the evidence and come to the right decision," said Jeffrey Berg, Robbie Tolan's civil attorney.

### **Officer described shooting on videotape**

On Thursday morning, jurors saw a videotape of Cotton explaining to investigators what happened about four hours after the incident.

On the tape, Sgt. Cotton could be overheard telling investigators during the walk-through of the scene that when he arrived at Tolan's home, Tolan was already lying on the ground. At that point, Sgt. Cotton explained that he was operating under the assumption that Officer Edwards had already chased the two men whom he believed were auto theft suspects.

"He was on the ground and everything was going to be sorted out without deadly force," said Cotton in the videotape.

Cotton went on to tell investigators that he couldn't believe Tolan started to get up and when he did, Cotton claims Tolan had his hand in his waistband as if to reach for something.

"I couldn't believe he was getting up. I kept thinking to myself, don't do it, don't do it," Cotton said in the videotape. "I thought he was drawing a gun."

Cotton said Tolan began shouting at him to get his hands off his mother. Cotton described Tolan's mother at the time as being very agitated and said that she refused to listen to anything he was saying.

"I rolled him onto his back and checked for weapons and didn't find one," said Cotton in the videotape.

Cotton went on to explain that everything happened so fast.

The defense maintains Cotton was following police procedure. Cotton says he fired three shots at Robbie Tolan because he believed he was about to be shot by an auto theft suspect.

If convicted of the charge of assault by a public servant, Cotton could spend anywhere from five years to life in prison.