

Robbie Tolan's Police Brutality Case Might Be Precedent-Setting — But So What?

BY MICHAEL BARAJAS

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Robbie Tolan's case reached a settlement Tuesday after nearly six years of legal wrangling

screengrab, via [facebook.com/RobbieRTolan](https://www.facebook.com/RobbieRTolan)

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When the U.S. Supreme Court revived Robbie Tolan's lawsuit against the Bellaire police officer who shot him on December 31, 2008, many legal observers were stunned.

The High Court had unexpectedly decided to weigh in on whether lower courts had rightly thrown out Tolan's lawsuit against Bellaire Police Sgt. Jeffrey Cotton, who shot Tolan in the chest on his parents' front lawn as he returned home from an early-morning run to Jack in the Box with his cousin. Tolan was unarmed. In a unanimous ruling, the justices said that lower courts hadn't given adequate consideration to Tolan's claims against Cotton, who, due to another officer's error (following Tolan's car into his parents' neighborhood and mistakenly punching Tolan's license plate into his computer with one number off), believed he was responding to a potential stolen vehicle.

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When Cotton arrived at the scene as backup, another officer already had Tolan and his cousin face down on the ground at gunpoint. According to the Tolans, Cotton then proceeded to get into a verbal altercation with Marian Tolan, Robbie's mother. They claim Cotton physically grabbed Tolan's mother (which he admitted to in a deposition) and then slammed her into a garage door with such force she fell to the ground (which Cotton has denied) when she wouldn't stop arguing that the car was theirs, that this was their home, and that police had to be mistaken. They claim that, when Robbie Tolan pushed his chest up off the ground to look at Cotton and say, "Get your fucking hands off my mother," the officer turned, pulled his pistol, and shot at Tolan three times, striking him once in the chest.

The Supreme Court said the lower Fifth Circuit appeals court, which tossed the case against Cotton and the Bellaire Police Department, "fail[ed] to credit evidence that contradicted some of its key factual conclusions" and improperly favored the police version of events. Justice Samuel Alito, perhaps the most pro-prosecution and -law enforcement judge on the court, even authored his



own separate opinion, saying lower courts shouldn't summarily dismiss a case like Tolan's given the "genuine issues of material fact." Lawyers like Eric Del Pozo with the Chicago-based mega law firm Jenner & Block, which filed an amicus brief with the Supreme Court on behalf of the NAACP Legal Defense & Education Fund, predicted Tolan's case would change how lower courts rule on police requests for so-called "qualified immunity"—the legal doctrine that cops are immune for their official acts unless plaintiffs can allege facts that, if true, violate a "clearly established right."

"It rights the ship a little bit," Del Pozo [told the *Atlantic*](#) when the Supreme Court ruled in Tolan's favor last year.

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But when it comes to police shootings, even cases that set precedent don't always succeed at trial. After a six-year legal battle and a successful trip to the U.S. Supreme Court, Robbie Tolan signed a settlement agreement with the officer that shot him just as the case was set to go to trial on Tuesday. According to that agreement, Cotton and the Bellaire Police Department will admit no wrongdoing, and the City of Bellaire will pay Tolan just \$110,000, a sum that is certainly eclipsed by the cost of litigating a case like Tolan's for six years.

While lawyers for the Tolans say the family wanted to move on with their lives, their diminishing prospects at the trial court level likely played a part in their decision. The day before trial, federal Judge Melinda Harmon excluded a host of plaintiff's witnesses expected to speak to Tolan's promising career as a professional baseball player (he was already playing in the minors and seemed poised to follow in his father's footsteps to the majors), witnesses that included the Ken Griffey's Junior and Senior. Tolan says his career was ruined due to lasting injuries he suffered from the shooting.

Tolans lawyers also argued it was highly unlikely Judge Harmon would give their case a fair shake once it went to trial, given her prior rulings in the case and recent statements from the bench. Last Friday, during a pretrial hearing, Harmon said she even considered dismissing the case against Cotton a second

time, despite the Supreme Court’s opinion in the case. Tolan’s lawyers cited her statements in an unsuccessful last-minute attempt to take Harmon off the case:

“I’m very tempted to grant it (dismissal) but I’m not going to right now ... I think the Supreme Court sent it back to the circuit so they could reanalyze my case. The 5th Circuit didn’t want to do that, so they punted to me. And I don’t think ... they would ever be satisfied if we didn’t take this case to trial ... I have a lot of faith in my opinion. ... I thought it was right the first time.”

“There was a lot of concern with some of the rulings that had been made,” Daryl Washington, one of Tolan’s Dallas-based lawyers, told the *Houston Press* on Tuesday. The Tolans, he said, ultimately wanted to end the case on their own terms. “This was about them getting their message out there and having some type of closure.”

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That message, Washington said, isn’t that all cops are dangerous, but that the legal system appears to be ill equipped to deal with those officers who do make questionable decisions in the field that either kill or maim unarmed, innocent people like Tolan. Sgt. Cotton, instead of being reprimanded in any way, was promoted to lieutenant by the Bellaire Police Department, on which he still serves. “This guy was not punished, but he was rewarded after he shot Robbie,” Washington said.

“Even if they say it was a mistake, you apologize for mistakes. This is something the city has failed to do, refused to do.”

William Helfand, an attorney who represented Cotton and who frequently defends officers and law enforcement agencies accused of wrongdoing, says that’s because Cotton did nothing wrong.

“Under no circumstances could any reasonable person construe the City’s decision to settle this matter as an indication in any way that Lt. Cotton did anything wrong on the evening in question,” Helfand wrote in an email to the *Press*. “To the very contrary, every person who understands how Texas law enforcement officers are trained and who understands the facts of this case has acknowledged that Lt. Cotton re-acted to Robbie Tolan’s admitted aggressive conduct exactly the way police officers are trained to respond.”

Cotton's behavior immediately after shooting Tolan (asking Tolan, “what were you reaching for?”) points to the fact that Cotton truly thought he was at risk of death or serious bodily injury, Helfand insists. The Supreme Court has consistently ruled that claims against police need to be considered from the officer’s perspective at the time of the shooting, not with all the information available in hindsight, Helfand says. What matters, Helfand says, is what Cotton says he felt at the time of the shooting.

Washington, however, argues that such a system means there are rarely any consequences for law enforcement in cases like Tolan's, at least not in court. Not even in cases where better policies and training could have prevented a tragic death, [such as in the 2009 Stafford police shooting of Aaron Hobart](#), an unarmed mentally ill teenager.

It’s the kind of system in which cases end with a whimper, out of court and with a paltry settlement. In Tolan’s case, his victory at the U.S. Supreme Court may very well afford more victims of alleged police brutality their day in court. Still, that doesn’t mean they’ll prevail once they get there.

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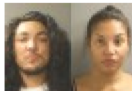
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