

## 10-43: Be Advised...

with Doug Wyllie, PoliceOne Editor in Chief

# Why Officer Darren Wilson wasn't indicted

**A cop may use lethal force when he or she “reasonably believes that the action is in defense of human life, including the officer's own life” and in the Ferguson incident, that’s precisely what happened**

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The grand jury in Ferguson (Mo.) has spoken, and there will be no criminal prosecution pursued against Officer Darren Wilson. The decision, outlined in detail tonight by St. Louis county prosecutor Robert McCulloch, comes about three and a half months after the officer-involved shooting of Michael Brown which sparked weeks of violent protest on the streets there and elsewhere, and a torrent of anti-cop fervor online.

Police officers, legal experts, and people who actually work in the law enforcement profession had expected no charges to be filed, and McCulloch spelled out clearly the rationale for the grand jury's decision — citing several times the inconsistent and contradictory statements made by many witnesses. But despite the rationale, the question from the general public will invariably be: “Why wasn’t Officer Wilson indicted?”

The short answer is: Because he shouldn’t have been indicted.

### **Justified Use of Force**

The facts of the case showed that under Missouri law — and in accordance with Supreme Court precedent — Officer Wilson was justified in shooting Michael Brown.

In fact, compared to other police use-of-force cases, this incident was pretty simple and pretty easy to evaluate. Under Missouri law, a police officer is authorized to use force in self-defense (when in fear of death or great bodily harm to himself or another person) and to effect an arrest or prevent escape under certain prescribed conditions. Further, the City of Ferguson Police Department’s use of force policy (section 410.01) states:

*“An officer may use lethal force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life.”*

Two court cases likely had some bearing in the grand jury's decision-making process:

**1. In *Jones v. City of St. Louis*, 92 F.Supp.2d 949 (E.D. Mo., 2000)** the federal district court, in a lawsuit from the police use of deadly force, held that the use of deadly force is reasonable where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or others.

**2. In *Fitzgerald v. Patrick*, 927 F.2d 1037 (8th Cir., 1991)** the 8th circuit federal court of appeals, in another police use-of-force case out of Missouri, said law enforcement officers are justified in using deadly force in self-defense or in defense of a third person if a reasonable person in similar circumstance would believe it was necessary.

Still, the person who knows woefully little about police work will ask, "How can an officer be in fear of death or great bodily harm from an unarmed teenager?"

It really boils down to two things: An unarmed assailant can legitimately threaten life or great bodily harm to another person — even an officer — and an objectively reasonable officer in a similar position to Wilson would have done what Wilson did.

PoliceOne Contributor and legal expert [Terry Dwyer](#) explained, "The fact that Brown was found to be unarmed does not affect the reasonableness of the officer's decision — it is the officer's reasonable perception at the time, not in hindsight. There seems to be evidence — or there is evidence — indicating a struggle taking place with the officer while he was still in his patrol vehicle and a struggle or attempted struggle for the officer's gun, which would justify the officer's perception that he was in danger of serious physical injury or death."

Let's examine both elements.

**1. Fear of Death or GBH:** First and foremost, the word "unarmed" does not equate to "not dangerous." In this case we had an attacker (Michael Brown) who was six feet, four inches tall and weighing 290+ pounds and a victim (Officer Wilson) who is shorter and lighter. An such [size disparity](#) affects the perception of the threat on the part of the person being attacked.

In addition to Brown's size, we have to acknowledge Brown's mindset at the time of the encounter. Merely five minutes before the shooting, Brown and an accomplice had manhandled a store clerk while robbing a convenience store.

When Wilson stopped the pair, they were walking down the middle of the street, something often done as a means of intimidating drivers and pedestrians. This action alone suggests a mindset bent on confrontation.

Further, remember that Officer Wilson told investigators that Brown had pushed him back into his SUV, then struggled for his pistol inside that squad. When there is a physical fight between an officer and an assailant, there is always at least one gun present. If the officer loses consciousness or the ability to completely protect himself/herself, that gun may be used against them.

“The public and the media do not seem to grasp that once someone grabs an officer's weapon, he is no longer unarmed,” said PoliceOne Columnist [Dan Marcou](#).

There are [a variety of ways](#) that officers can perceive that they're under threat. Environmental factors such as being confined in a vehicle — being belted in and being assaulted — especially when facing someone who is vastly larger than yourself and charging at you, can increase an officer's perception of threat.

**2. Reasonableness Standard:** The Supreme Court has clearly stated that an officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them at the time — without regard to their underlying intent or motivation.

Columnist and Police Chief [Joel Shults](#) explained, “If the physics and facts of the Brown encounter show that Brown attacked, the question of reasonableness starts first with the question of whether any other citizen would have the right to defend themselves. Wilson's position as a peace officer gave him no fewer rights.”

Shults added, “If activists want to change the law that is another debate. But the law as it stands is clear. 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. 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.”

## **Fire in the Streets**

Three months ago, the narrative of “unarmed black teen shot by white police officer” went so viral so fast that cooler heads could not possibly have prevailed. Many people relentlessly beat that drum in social and mainstream media regardless of the fact that it was totally out of tune with reality.

A day after the Ferguson incident, a candlelight vigil went wildly off the rails, resulting in mayhem in the streets. For weeks, people commuted to Ferguson from far and wide to cause nightly havoc.

As the looting and the rioting were fiercely ongoing, thousands of people said they were demanding justice. But what they actually wanted was satisfaction. And considering the facts that have subsequently come to light, that pursuit of satisfaction seems only marginally related to the incident that ignited their response.

The turmoil has negatively impacted Ferguson in myriad ways. More than a dozen businesses were raided and robbed by rampaging rioters — from AutoZone to Zisser Tire... from Footlocker to Shoe Carnival... from Walgreens to Walmart — and the financial loss is still being calculated. Let’s not forget, too, that several LEOs suffered injuries — including impact wounds from thrown rocks and bottles, as well as one gunshot wound — and no dollar amount can be placed on that damage.

Some have feared tonight will likely be the same — if not worse.

All indications are that law enforcement is far better prepared for unrest this time around. We hope that preparation is met by a more enlightened perspective among those who come to protest, and an understanding that whatever the larger societal issues and pent-up frustration that this saga has brought to the surface, destruction and violence of one's community is no way to seek “justice.”

To our brothers and sisters on the front lines in Ferguson and at other protests around the nation — please stay safe.