

# Cleveland prosecutor criticizes “egregious” errors in exoneration of killer cop

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On Friday, the Cuyahoga County Prosecutor’s Office asked an Ohio appellate court to correct “egregious” legal errors made in the May 23 acquittal of police officer Michael Brelo.

Brelo was found not guilty last month of voluntary manslaughter and felonious assault for his role in the gunning down of unarmed Timothy Russell and Malissa Williams in a hail of bullets on November 29, 2012. Thirteen officers fired a total of 137 shots into the vehicle.

Brelo fired 49 bullets at the couple, including 15 from point blank range while standing on the hood of the couple’s car, which was cornered after the couple fled from a traffic stop. Initial claims that gunshots had been heard coming from the car turned out to be false.

In defending this use of force, Judge John P. O’Donnell made the pseudo-legal claim that because Brelo was one of over a dozen officers who had opened fire at the vehicle, it was nearly impossible to determine “that his shot alone actually caused... death or [that] it was the ‘straw that broke the camel’s back.’”

On Friday, prosecutor Timothy J. McGinty asserted that “throughout the verdict, the trial court ignored binding precedent and chose to employ a novel and unique statement on the law of causation,” adding “that the State must prove that only one actor, here Brelo, was the sole cause of death—is egregious. If allowed to stand, forever before the trial court, the State will be precluded from holding any defendants who each independently act to cause the death of another from any criminal liability.”

The prosecutor’s statements underscore the clear and evident absurdity of O’Donnell’s reasoning. The state regularly prosecutes individuals for murder or other crimes even if they did not commit the specific act—for example, if they acted as an accomplice by driving a

getaway car.

Moreover, under the doctrine of felony murder, individuals can be prosecuted for any deaths that occur during the commission of a dangerous felony. Four youth in Elkhart, Indiana were recently found guilty of murder when one of their friends was shot and killed by a homeowner when the five individuals broke into a house they thought was empty.

Yet in the case of Brelo, who actually did commit the murder, an almost impossible burden of proof is demanded.

McGinty also criticized the judge’s finding that the force used against Russell and Williams was “reasonable.”

“Never in the history of American policing has a police officer left cover to attack a stopped, trapped, and incapacitated car, by jumping onto the hood, reloading his weapon, and firing fifteen more shots downward into the unarmed occupant’s chests at point blank range and then have it [declared] ‘reasonable’ by a court of law,” continued McGinty, adding that Brelo had engaged in “military tactics which encourage killing as many enemy combatants as possible.”

He added, “The law as stated in the verdict places no restraint on the tactics civilian police officers are to use, finding the use of any tactics to be justifiable so long as the officer perceives as subjective fear of his or her life.”

Despite these denunciations, which amount to an indictment of the sham legal procedure, McGinty did not call for a retrial, as acquittals cannot be appealed due to Constitutional prohibitions against double jeopardy.

Instead, the prosecutor asked the court to “correct the errant pronouncements of law” and make several technical changes in order not to “contaminate future

rulings in the trial court and the entire Court of Common Pleas.”

The not guilty verdict for Brelo came as the US Justice Department announced that it had reached an agreement with the city of Cleveland to adopt a number of toothless reforms of its police department in order to stem social unrest. Similarly, no charges have been brought against a Cleveland cop who last November shot twelve-year-old Tamir Rice for holding a toy gun, and then failed to provide first aid as the child lay dying on the ground.

The Ohio Common Pleas Court ruling in favor of officer Brelo is of a piece with plans nationally to militarize police departments and defend officers who use deadly force against the population. A recent article in the *Washington Post* found that despite its claims of sympathy for the victims of police violence, “at the Supreme Court... [the Obama administration’s] Justice Department has supported police officers every time an excessive-force case has made its way to arguments.”



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