

The Legal Stakes for the Minneapolis ICE Shooter

Is he immune from prosecution? Can he justify the second and third shots in court? Here's a legal analysis.



IN THE VIRAL VIDEOS CIRCULATING ONLINE, SOME SEE A GROTESQUE MURDER; OTHERS, AN ACT OF SELF-DEFENSE. (PHOTO BY OCTAVIO JONES / AFP VIA GETTY IMAGES)

By Jed Rubenfeld

We see what we want to see. And we're absolutely sure we see it.

An Immigration and Customs Enforcement (ICE) officer's fatal shooting of a woman in Minneapolis, blocks from where George Floyd was killed in 2020, has produced the same kind of polarized alternate universes of conflicting factual claims that followed Floyd's death.

In the viral videos circulating online, some see a grotesque murder; others, an act of self-defense. Many say that Renée Good, the woman shot by the ICE agent, clearly hit the officer, Jonathan Ross, with her car. But *The New York Times* says otherwise, and one commenter on X said that “if you watch” the *Times* video analysis and “still think those shots were justified, you just might be a psychopath.” On Friday, the public saw a cell phone video of the encounter taken by Ross himself, but it seemed only to reconfirm viewers in their original positions.

Although I have my own view of the videos, I won’t try to speak to the basic factual disputes. But I can answer some of the legal questions.

Does Ross have “absolute immunity” from prosecution by Minnesota?

No, he does not.

Vice President J.D. Vance and other administration officials said Thursday that Ross cannot be prosecuted by Minnesota. “You have a federal law enforcement official engaging in federal law enforcement action—that’s a federal issue,” Vance said. “That guy is protected by absolute immunity. He was doing his job.”

That’s not true. The Supreme Court rejected this exact argument in 1906.

In a case called *Drury v. Lewis*, Pennsylvania sought to prosecute a U.S. soldier who had killed a young man believed to have been stealing copper fixtures from a federal arsenal in Pittsburgh. The officer said he shot the fleeing young man only after ordering him to halt. But in a foreshadowing of another controversial police killing—Michael Brown in Ferguson, Missouri, in 2014—witnesses said the soldier fired after the young man had stopped, turned, put his hands up, and said, “Don’t shoot.”

The U.S. argued that the soldier was “absolutely” immune from state prosecution because he was a federal officer “engaged in performing” his federal duties. But given the conflicting evidence, the Supreme Court allowed the prosecution to proceed, holding that it was not yet known whether the soldier was acting “lawfully” in the performance of his federal duties. Under *Drury*, as a federal appellate court put it in 2001, a federal officer’s “immunity is not absolute.”

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However, Vance was not entirely wrong. Cases since *Drury* have made clear that federal officers do have a qualified immunity from state prosecution. If the officer can show he “reasonably believed” he was doing what “was necessary and proper,” then the state cannot prosecute him.

This rule is a little peculiar because its test for immunity essentially tracks and replicates the test for guilt. If Ross reasonably believed his gunshots were “necessary and proper,” then he is not guilty of homicide. In other words, Ross is immune from prosecution if he’s not guilty, which paradoxically seems to imply that he has to be tried first before we know whether he can be prosecuted.

Here’s how that paradox is likely to be handled in court. If Minnesota indicts Ross and tries to prosecute him, Ross will have the right to remove the case to federal court. He can then ask for a preliminary evidentiary hearing on the immunity question. If Ross can prove to a federal judge that he reasonably believed his gunshots were necessary and proper, the case will be dismissed.

Can the federal government cut Minnesota out of the investigation?

Secretary of Homeland Security Kristi Noem said Thursday that Minnesota doesn't "have any jurisdiction in this investigation," and according to Minnesota authorities, the Federal Bureau of Investigation is preventing Minnesota personnel from participating in the investigation. Is that legal?

Yes, it is. The federal government can indeed cut Minnesota out, but only from the federal investigation. The feds can't prevent Minnesota from conducting its own investigation.

Minnesota Public Safety Commissioner Bob Jacobson has said it will be "extremely difficult" for Minnesota to investigate "without cooperation from the federal government." That may be true, given federal control over crime scene evidence, including Good's car, which the FBI has apparently impounded. Minnesota authorities have said that they are being denied access to the FBI's "investigative interviews," but Minnesota is free to interview eyewitnesses on its own. Minnesota Attorney General Keith Ellison has asked witnesses to come forward and give the state any additional videos they may have.

The next battle on this front may be over subpoenas. Minnesota can in principle issue subpoenas to the ICE officers who were present at the shooting—although Ross would likely have a constitutional right not to answer questions. However, the enforceability of such subpoenas would likely be contested. Courts typically hold that the U.S. government has the right to refuse consent to any state subpoenas issued to federal officers.

What about the second and third shots?

Ross seems to have fired his first shot through Good's windshield. At that moment, he may have been standing in front of or nearly in front of Good's car—possibly right as, or right after, she struck him. But it seems that Ross fired the next two shots through the driver's side window, at

point-blank range, when he was standing to the side of the car and Good was trying to drive off.

If that's true and if Ross's second or third shot caused Good's death, some legal analysts have said that he is guilty of homicide regardless of whether his first shot was justifiable. In support, they point to the general rule, announced by the Supreme Court in the 1985 case Tennessee v. Garner, that officers cannot use deadly force against a fleeing suspect unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." Once Ross was out of the vehicle's path and Good started to drive off, some argue, Good no longer posed a significant threat to Ross or anyone else.

But in some circumstances, an officer can keep shooting at a fleeing suspect even after the officer is out of immediate danger.

In the 2014 case Plumhoff v. Rickard, the Supreme Court held that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." When "lethal force is justified," the court added, "officers are taught to keep shooting until the threat is over." Because that case also involved officers shooting into the vehicle of a suspect trying to drive away after having struck an officer, it is a strong precedent in Ross's favor.

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On the other hand, that was a civil case, not a criminal prosecution, and the suspect there had already engaged in a reckless, 100-mile-per-hour chase with police, making it more likely that he posed a threat of

serious injury to others if allowed to drive away. Some might say there was no reason to believe that Good would have posed any danger to anyone had she gotten away.

But even in *Tennessee v. Garner*, which is considered a high-water mark in limiting officers' use of deadly force, the Court said that when officers have "probable cause to believe" the suspect "has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape."

Deliberately hitting a human being with a car is of course a crime threatening serious physical harm. Ross turns out to have had personal experience with such harm, having been dragged by a vehicle last June for about 100 yards as a suspect drove away from a traffic stop. If Ross reasonably believed that Good deliberately struck him with her car, or even tried to, the *Tennessee v. Garner* test would probably be satisfied, in which case he was permitted to use deadly force if necessary to prevent her escape.

Every person with a heart is surely saddened by this death. It seems so needless. And it's easy to imagine Good as entitled, annoying and panicked, rather than reprehensible and violent. Yet I can't help thinking, reflecting on the whole sad episode, that its one clear lesson is this: If an officer tells you to get out of your car, get the hell out of your car.

