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# Charging a Police Officer in Fatal Shooting Case is Rare, and a Conviction is Even Rarer

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## **Charging a police officer in fatal shooting case is rare, and a conviction is even rarer**

BY

Philip M. Stinson

SPECIAL TO THE NEW YORK DAILY NEWS

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About 1,000 times each year, an on-duty police officer shoots and kills someone. Almost all of these shootings result in a finding that the officer was legally justified in using deadly force.

A cop is justified in using deadly force if the officer has a reasonable fear of an imminent threat of serious bodily injury or death against the officer or someone else. The legal test requires that a reasonable police officer would have perceived the threat.

On many occasions, an officer has been cleared by a prosecutor, investigators — and sometimes even grand juries — who determined an officer was legally justified in using deadly force. That is a difficult concept to explain to victims' families.

Since 2005, there have been 82 police officers across the country charged with murder or manslaughter resulting from an on-duty shooting. That includes 18 officers charged in 2015, 13 in 2016, and three charged with murder or manslaughter resulting from an on-duty shooting so far in 2017.

It is a rare event for a police officer to be charged with a crime resulting from a fatal on-duty shooting, and even rarer for an officer to be convicted in one of these cases.

In the past 13 years, only 29 officers have been convicted and most of those convictions were for lesser manslaughter offenses. Only one officer has been convicted of intentional murder during that time period.

On Wednesday, NYPD Sgt. Hugh Barry was charged with murder in the shooting death of a 66-year-old woman. Bronx District Attorney Darcel Clark knows this isn't going to be an easy case to successfully prosecute.

There have been 15 officers convicted at a jury trial (the other 14 convictions were by guilty pleas).

The criminal cases for 31 officers ended in a non-conviction. The criminal cases for 22 officers are still pending, including several cases where hung juries resulted in mistrials.

Jurors are often very reluctant to second-guess the split-second life-or-death decisions of an on-duty police officer involved in a potentially violent street encounter with a citizen. This is especially true in cases where an officer testifies at their own trial that they only shot and killed the person because the officer felt threatened, even in cases where prosecution witnesses have testified that the officer's use of deadly force was objectively unreasonable.

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