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## IS IT *EVER* OK TO SHOOT SOMEONE IN THE BACK? (PART II)

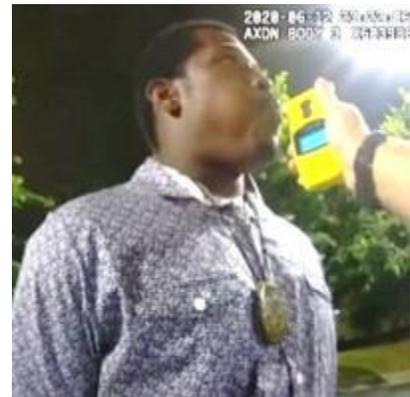
***In Atlanta, a “routine” encounter turns lethal.  
Instantly, the deplorable outcome is attributed to race.***

*For Police Issues by Julius (Jay) Wachtel.* Friday, June 12, Atlanta. Thanks to citizen videos, police bodycams and a fixed surveillance camera, there is little question about what took place in a Wendy’s parking lot on that fateful evening. But explaining why a “no big deal call” (in cop-speak) led to the death of a citizen who had at most driven while drunk takes a lot more than pictures. To be sure, given the current, polarized atmosphere, jumping to the conclusion that it was all about race – after all, the cops were white, the citizen black – seems like a no-brainer. But policing is a complex enterprise. So let’s take a closer look. (Our main sources were [ABC News](#), the [Atlanta Journal-Constitution](#), [The New York Times](#), and a [YouTube post](#) by GPB Media.)

Wendy’s called police about 10:30 pm to report that drive-thru customers were maneuvering around a motorist who was asleep in his car. Officer David Brosnan responded. According to [ABC News](#), he’s on his second year as a cop. Officer Brosnan [woke up the driver](#), Rayshard Brooks, 27. Brooks was pleasant and cooperative, and on request relocated his vehicle to a parking spot.



Officer Brosnan called for assistance. Officer Garrett Rolfe soon arrived. He had been with Atlanta PD since 2013. According to the *Journal-Constitution*, officer Rolfe, a member of the “High Intensity Traffic



Team,” made more than fifty DUI arrests in 2019 and was honored by Mothers Against Drunk Driving. Brosnan quickly briefed Rolfe, who took over. Brooks readily performed a field sobriety test, then agreed to a breath test, which Rolfe administered.

That’s when things turned dicey. [A body-cam close-up](#) of the breath device screen depicts a reading of .108. That’s 35 percent higher than [Georgia’s .08 limit](#). After telling

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Brooks that he had “too much to drink to be driving,” Officer Rolfe instructed him to put his hands behind his back and reached for his handcuffs. (Officer Brosnan, who isn’t clearly depicted on the video, walked up to help.)



Mr. Brooks, who had already volunteered to leave his car and walk home, seemed upset. Although he initially complied, as



officer Rolfe started applying the cuffs Brooks resisted with such force that he and both officers tumbled to the ground. That’s when officer Brosnan pulled his Taser. Brooks promptly grabbed it. Breaking free, he then punched officer Rolfe in the face and bolted, armed with a Taser. Officer Rolfe fired his Taser at Mr. Brooks, who seemed to react. But the man ran off anyway.



Taser in hand (newer versions can fire twice), officer Rolfe chased Brooks through the parking area. Officer Brosnan



trailed far behind. During the chase, officer Rolfe switched the Taser to his left hand and [drew his pistol](#). Momentarily, Brooks turned and fired his Taser (see left). His shot went wild. Officer Rolfe instantly discarded his Taser, aimed the pistol and fired several rounds (see right). Two struck Brooks; both in the back. (Apparently, at least one round went wild and struck an occupied vehicle in the lot.)

Brooks died at the scene. According to the medical examiner, [cause of death](#) was “two gunshot wounds of [Mr. Brooks’] back that created organ injuries and blood loss.”

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Things moved swiftly. One day after the shooting, [Atlanta Mayor Keisha Lance Bottoms](#) announced that she did “not believe this was a justified use of deadly force” and fired officer Rolfe. At a hastily-called news conference, the mayor also [announced the voluntary departure](#) of police chief Erika Shields, a veteran Atlanta cop. Here’s an extract from the chief’s parting words:

Out of a deep and abiding love for this City and this department, I offered to step aside as police chief. APD has my full support, and Mayor Bottoms has my support on the future direction of this department. I have faith in the Mayor, and it is time for the city to move forward and build trust between law enforcement and the communities they serve.

Chief Shields’ “offer” had been quickly accepted. Blame assessment was moving at warp speed. In a charged national atmosphere, city officials were confronting the police killing of a black citizen who had seriously harmed no one. Yet forty-five minutes after the police stepped in he lay dead. That dreadful incongruity [resounded with mayor Bottoms](#):

I firmly believe that there is a clear distinction between what you can do and what you should do. I do not believe this was a justified use of deadly force and have called for the immediate termination of the officer.

Her sentiments [were promptly echoed](#) by Fulton County D.A. Paul Howard, whose office was considering charges against the officers:

(Brooks) did not seem to present any kind of threat to anyone, and so the fact that it would escalate to his death just seems unreasonable. It just seems like this is not the kind of conversation and incident that should have led to someone's death.

What is the law about police use of deadly force? Here are two Supreme Court cases on point:

- [Tennessee v. Garner](#) (1985): Officers may not use deadly force to prevent “an apparently unarmed, non-dangerous fleeing suspect” from escaping unless there is “probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”
- [Graham v. Connor](#) (1989): Four years after Garner the Justices offered a key concession, ruling that the appropriateness of force must take into account “the facts and circumstances judged from the perspective of a reasonable officer on

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the scene” while allowing “for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.”

Unlike the Supremes, who simply refer to “suspects,” best we can tell [Atlanta P.D.’s use of force policy](#), which cites *Graham v. Connor*, mentions deadly force only in relation to arresting a suspected felon (sec. 4.6.9):

Employees shall only use deadly force to apprehend a suspected felon when: (a) he or she reasonably believes that the suspect possesses a deadly weapon or any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; (b) when he or she reasonably believes that the suspect poses an immediate threat of physical violence to the officer or others; (c) or when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm (O.C.G.A. Section 17-4-20) if the employee *reasonably believes that the suspect’s escape would create a continuing danger of serious physical harm to any person.* (emphasis ours)

That “O.C.G.A. section” refers to [a provision in the Georgia State code](#) that addresses using deadly force to apprehend felons. Actually, the “felon” distinction probably makes little difference here. After all, Mr. Brooks *became* a suspected felon when he violently resisted arrest, then fired a Taser at his pursuer. [According to the D.A.](#), the task now was to decide whether Brooks posed the threat mentioned in *Garner*:

Specifically, (the question is if) Officer Rolfe, whether or not he felt that Mr. Brooks, at the time, *presented imminent harm of death or some serious physical injury.* Or the alternative is whether or not he fired the shot simply to capture him or some other reason. If that shot was fired for some reason other than to save that officer's life or to prevent injury to him or others, then that shooting is not justified under the law. (emphasis ours)

Bottom line: did officer Rolfe believe he faced a risk of “death” or “serious physical injury” at the moment that he pulled the trigger? Or did he feel that he or others “imminently” faced that risk? And either way, was that belief reasonable?

As far as the D.A. was concerned, *it was not.* On June 17 [he filed eleven counts](#) against the ex-cop, including murder, aggravated assault, violating his sworn oath and damaging property. Three of the aggravated assault counts and the property offense stem from his discharge of a round that went astray and struck an occupied vehicle. One count of aggravated assault accuses him of kicking the dying man. Officer Brosnan

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wasn't charged in relation to the actual shooting. But he faces three counts: aggravated assault, for stepping on Mr. Brooks as he lay on the ground, and two counts of violating his oath.

Let's take a closer look at Mr. Brooks. At first, he seemed pleasant and cooperative. He even referred to officer Rolfe by his first name. Those niceties ended when the cuffs were about to come on. Watch the videos – Mr. Brooks' fighting abilities are jaw-dropping. He was also a convicted felon, and currently on probation. Here's his summary table from the Clayton County superior court:

| Type | Name             | Offense   | Filing Date | Case No. /Status                    | Judge  |
|------|------------------|---|-------------|-------------------------------------|--------|
| DEF  | BROOKS. RAYSHARD | THEFT BY TAKING FIN<br>TRANS CD TH FIN TRANS<br>CD TH FIN TRANS CD TH<br>FIN TRANS CD TH          | 07/13/2016  | 2016CR01606 09 Disposed             | CARTER |
| DEF  | BROOKS. RAYSHARD | FALSE IMPRISON SIMP<br>BATTFAM V BATTERY<br>SIMPLE FELONY<br>CRUELTY                              | 05/22/2014  | 2014CR01069 09 Disposed             | CARTER |
| DEF  | BROOKS. RAYSHARD | FALSE IMPRISON THEFT<br>BY REC ST INTERFER<br>WCUST OBSTR OFFICER                                 | 05/22/2014  | 2014CR01051 09 Disposed             | CARTER |
| DEF  | BROOKS. RAYSHARD | FELONY CRUELTY  | 05/30/2014  | 2014AD00333 09 Disposed             | CARTER |
| DEF  | BROOKS. RAYSHARD | VGCSA MARIJ VGCSA<br>SCHED I WEAPONPOSS<br>OUR MARJ OUNCELESS<br>IDENTITY FRAUD MARJ<br>OUNCELESS | 04/12/2012  | 2012CR00822 09 see clerks<br>office | CARTER |

Mr. Brooks' record (click [here](#) and enter his name) dates back to 2012, when he was charged with drug and weapons crimes. Mr. Brooks pled guilty to two counts and received a suspended sentence. Two years later he pled guilty to false imprisonment, two counts of battery and one of felony cruelty to children and drew a one year prison term, to be followed by probation. In 2016 he pled guilty to five counts of theft and apparently returned to prison for another year. He was again released on probation. Apparently there were more violations, and his most recent hearing was in February 2020. (We couldn't find a detailed account of Mr. Brooks' criminal record in the American media. For a *Daily Mail* [U.K.] summary click [here](#).)

An [opinion piece](#) by CNN host Van Jones, who is deeply involved in criminal justice reform, suggested that Mr. Brooks' record had *everything* to do with his reaction:

For a person on probation, as Brooks was, any contact with a police officer -- for any reason -- means an almost certain return to the horrors of a jail cell. It is safe to assume that Brooks did not want to go back to jail over sleeping in his car or

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failing a sobriety test, lose everything he had and be forced to start his life over again. In other words, we do not know why the Atlanta police officer chose to shoot a man who was running away from him. But we can guess why that man chose to run, in the first place. Brooks didn't want to lose his liberty. Instead, he wound up losing his life.

What about officer Rolfe? After all, this is the time of coronavirus. With police departments throughout the country throttling back, it's been suggested that another officer might have let the man walk home. Mr. Brooks' status as a felony probationer, though, probably made that less likely. In any case, strictly enforcing DUI isn't a bad thing. Indeed, there are innumerable police-citizen encounters every day, and nearly all turn out peaceably. But as your writer can personally attest, there are also plentiful opportunities for bad endings. Making lots of arrests can yield great stats and plaudits from MADD. It also increases the chance that sooner or later something will go wrong. Possibly *very* wrong.

We've often argued that both citizen and officer personalities matter. As he interacted with Mr. Brooks and administered field sobriety and blood-alcohol tests, officer Rolfe evidenced a calm, adept, compliance-gaining approach. Yet your blogger also sensed that he was a determined, perhaps even hard-headed sort. If there was enough evidence, no way would he let Mr. Brooks go. At the end, that .108 blood alcohol cinched it. Probable cause!

In "[Fair but Firm](#)" we mentioned that, as every cop well knows, being nice doesn't always gain compliance. Even when officers do their best, some citizens – say, Mr. Brooks – still go berserk. (Our first "[Is it Ever OK?](#)" cited two such examples, both involving chronic offenders.) Yet even when things go wrong they seldom turn lethal. Was there something about officer Rolfe that made it more likely he would turn to a gun? [ABC News reported](#) that officer Rolfe was "reprimanded" for a 2016 episode in which he used a gun. One year before that, [according to the Guardian](#), officer Rolfe and two colleagues shot a man during what a judge would call "the wildest incident," then allegedly covered it up.

But as we discussed two years ago in [Part I](#), shooting a man in the back – it was then 25-year old Daniel Hambrick – is something more. *Much* more:

Cops are supposed to protect everyone – not just themselves. That, indeed, is the reason for their being. Still, whatever its justification, shooting someone in the back is and will forever remain a loathsome practice. To many observers, perhaps most, Hambrick's killing seems nothing less than an execution, and this won't

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change no matter how carefully we deconstruct the circumstances that led to his demise.

There's no doubt that Mr. Brooks' willingness "to go to the mat" presented substantial risks. On the other hand, while we don't consider officer Rolfe's actions *per se* unreasonable, the thought of shooting someone in the back remains simply abhorrent. We're certain that most cops wouldn't do it. A number of policing experts, though, believe that officer Rolfe was justified. Chris Wigginton, director of Georgia's law enforcement academy, pointed out that [officer Rolfe had plenty of reason to fear](#) that a second attempt was coming, and that it could leave him seriously injured or dead. According to the *New York Times*, officer Brosnan's lawyer now claims that [Mr. Brooks Tasered his client](#) during the struggle, so shooting at officer Rolfe left him with an empty gun. We didn't see that first discharge on the videos, and even if it happened it's doubtful that in the heat of things the officers were keeping count.

Along these lines, we should keep in mind that officers routinely call in the names and birthdates of whomever they stop, and dispatchers promptly check and report any criminal histories they find. During the stop Officer Rolfe may well have learned that Mr. Brooks was on felony probation. So that, too, might have influenced his actions.

However one evaluates what took place, avoiding such endings is something that everyone can agree on. Could more training help? Perhaps, but officer Rolfe was [reportedly recently trained](#) in use-of-force and de-escalation techniques. How about more rules? Usually we're of the opinion [that there are already plenty](#). But weighty public policy decisions are now being made at warp speed. With poorly informed, ideologically-driven solutions looming, agencies should make every effort to speedily clean their own house. They could begin by having working officers give examples and provide opinions about regulating the use of force against fleeing suspects, including those who aren't believed to be armed with a gun.

So let's get on with that fine-tuning. And please, let there be no reason for a Part III!