

Posted 10/8/18

IS IT *EVER* O.K. TO SHOOT SOMEONE IN THE BACK?

Laws, policies and politics clash with the messiness of policing



Click to play video of Officer Andrew Delke chasing Daniel Hambrick

By Julius (Jay) Wachtel. Let's begin by summarizing two episodes in Nashville:

- On February 10, 2017 Nashville police officer Josh Lippert was driving an unmarked cruiser [when he observed an SUV run a stop sign](#) and pull into a parking lot. Officer Lippert, who is white, parked behind the vehicle. He was immediately approached by its driver and sole occupant, Jocques Clemmons, a 31-year old black man. [Officer Lippert said](#) he told Clemmons, who appeared to be fumbling with something on his person, to return to his car. Instead, the man took off running (see [surveillance video](#), beginning on the extreme upper left). Officer Lippert chased him on foot. As they made their way around parked cars a revolver reportedly fell from Clemmon's waistband. According to Officer Lippert, Clemons snatched it up and turned towards him. That, Officer Lippert told investigators, is why he opened fire. "He was fixing to kill me. I truly believe he was fixing to kill me."
- One and one-half years later, during the evening hours of July 26, 2018 Nashville officer Andrew Delke, who was also operating an unmarked cruiser, [tried to pull](#)

[over a car](#) that was supposedly “travelling in an erratic pattern.” But the vehicle purposefully eluded him. Officer Delke, who is white, soon happened on a parked car. Several black men stood nearby. Officer Delke later said that they resembled the occupants of his vehicle of interest. One, Daniel Hambrick, 25, promptly ran off, and Officer Delke chased him on foot. Officer Delke said that Hambrick had a handgun in one hand, and that he repeatedly yelled warnings to drop the weapon or be shot. His commands had no apparent effect, and shortly after the pair rounded a corner [Officer Delke fired four times](#): three rounds struck Hambrick in the back, with fatal results (for the graphic video click above image or [here](#)).

We’ll come back to these incidents in a moment. First, let’s examine how police use of force law developed. That takes us back to October 3, 1974, when [Memphis officers shot and killed a fleeing burglar](#) who ignored their orders to stop. Their reason for shooting – that the suspect would have otherwise gotten away – complied with Tennessee law that allowed “all the necessary means” to arrest a fleeing suspect, and with agency rules that allowed using deadly force to arrest burglary suspects. In time this incident led the Supreme Court to rule that officers may not use deadly force to prevent “an apparently unarmed, nondangerous 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.” (*Tennessee v. Garner*, No. 83-1035a, 1985)

Garner caused major changes in use-of-force laws and regulations. [Here is an extract](#) from Tennessee’s most recent (2010) version:

...the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of the officer's identity as an officer and given a warning that deadly force may be used unless resistance or flight ceases, and [the officer] has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury [or] that the individual to be arrested poses a threat of serious bodily injury, either to the officer or to others unless immediately apprehended.

And here, using their punctuation, are [Nashville P.D.’s current rules](#):

11.10.120 Use of Deadly Force in Self Defense

Authorized employees may use deadly force when they have a reasonable belief that the action is immediately necessary to prevent imminent death or serious bodily injury of a human being, including the employee.

11.10.130 Use of Deadly Force to Effect an Arrest

Authorized employees may use deadly force to effect the arrest of a fleeing felon only when:

- A. The employee has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; AND
- B. The employee has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the employee or to others unless immediately apprehended; AND
- C. Where feasible, the employee has identified himself/herself as a police employee and given warning such as, “STOP--POLICE--I'LL SHOOT,” that deadly force is about to be used unless flight ceases; AND
- D. If all other means of apprehension available to the employee under the attendant circumstances have been exhausted.

Similar policies are in effect at departments across the U.S. (For use of force rules in the 100 largest police departments see the “[Police Use of Force Policy Database](#).”)

Back to the foot chases in Nashville. Since there was no reason to believe that either suspect committed a breach beyond a minor traffic violation, neither officer was shielded by the city’s “to effect an arrest” rule (11.10.130, above). Both cops, though, claimed that they acted within the purview of 11.10.120; that is, in self-defense:

- Officer Lippert insisted that his quarry dropped his gun, picked it up and turned towards him. Although that event wasn’t captured on video, a witness confirmed that Clemmons picked up a dropped gun. [A stolen .357 revolver was recovered](#) at the scene. [Autopsy results](#) proved somewhat mixed. While two bullets penetrated from the back (not good!), Clemmons also suffered a bullet wound on the left side and a grazing wound on the left abdomen. [He also had a substantial criminal record](#), including an eight-year prison term for a cocaine conviction which, as a felony, prohibited him from possessing a firearm. Despite protests by local activists, [Officer Lippert was fully exonerated](#) and no lawsuit was ever filed.
- Daniel Hambrick, the man Officer Delke chased, [had an extensive criminal record](#), including convictions for aggravated robbery and, repeatedly, for felon in possession of a weapon, once quite recently. Officer Delke’s radio calls during the chase [mentioned that the suspect had a gun](#). But as the surveillance video shows, Hambrick didn’t turn around, and there was no evidence that he directly threatened anyone with the weapon. (Nashville PD later posted [a picture of the firearm](#), a 9mm. pistol, on Twitter.)

Finding Officer Delke's justification for going after Hambrick vague and disjointed, and lacking compelling evidence that his life was at risk, [the D.A. charged Officer Delke with homicide](#), which under State law runs the gamut from culpable negligence to murder. Bottom line: unlike the episode involving Officer Lippert, no one turned on Officer Delke with a gun. So there was no self-defense.

Maybe not. Yet distinguishing between the threats posed by Clemmons and Hambrick is fundamentally unsatisfying. Both were armed felons. They ostensibly fled for the same reason: to avoid being caught with a gun, an offense that could easily land them in prison. As Officer Delke's lawyer pointed out, an armed felon could certainly be considered a threat to his pursuer, to any citizens they might encounter, and to other officers coming in to help. What if there had been no chase? On the one hand, maybe nothing bad would have happened. On the other, Hambrick might have capitalized on his liberty to, say, shoot an innocent someone the following day. How would the community feel then?

["Routinely Chaotic"](#) describes how the disorderliness of the police workplace affects officer decision-making. Bottom line: given the unpredictability of street encounters, even the best officers may not be able to tailor their responses to the intricacies of laws and regulations, let alone politics. That may be why only four years after *Garner* the Supreme Court offered a key concession, ruling that the appropriateness of the use of force, including deadly force, must be assessed "in light of the facts and circumstances judged from the perspective of a reasonable officer on the scene," giving allowances "for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." (*Graham v. Connor*, No. 87-6571, 1989)

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 change no matter how carefully we deconstruct the circumstances that led to his demise. Still, in light of *Graham*, we anticipate that while Officer Delke may have erred in tactics and judgment, he will be eventually absolved of criminal liability. Should that happen, explaining *why* to communities that are already angry about the killing of black men by white cops promises to be a very tough slog.