

Preliminary Thoughts on the Shooting in Charlotte, North Carolina

I cannot myself make out much from the videos in this incident. But precisely what it is that video can and cannot reveal is a worth some exploration.

In assessing any video of a dynamic, real world encounter, it is important to acknowledge some important factors as your framework. First, people assume that because video offers a visual (and sometimes auditory) record, from a certain perspective, of (some portion of) a given event, it offers a complete and objective record of that event. "You can't argue with video" is a common expression of this presumption. Even cursory scrutiny demonstrates the weakness in this way of thinking. A real world encounter is multi-sensory and experienced in three dimensions. A video is inherently limited and, not unimportantly, derivative in the sensory information that it offers. More crucially, all video is two-dimensional. Video is also limited to a particular perspective and so cannot, in the nature of the case, capture the panoramic sweep of real world immersion in 360 degrees. To take just a few elements that video necessarily misses: adrenaline and the psychophysiological changes that it wreaks, sharpening and dulling of sense perception, nuances of attention and inattentional blindness, background cognitive noise (e.g., "This guy has a gun in his hand, he won't drop it; cops have been shot under these same kind of circumstances..." or, from the other perspective "Cops have shot unarmed black men, I don't know whether I should drop my gun..." The soundness of the cognitive noise is, proximately, beside the point. That it impacts action, for good or ill, is not. The sum of it is this: video captures none of these things--and misses more indeed, even though it is quite evident that these first person, richly experienced human factors manifestly impact performance--from both sides of an encounter, I hasten to add. Video, in short, may be a good place to commence

an inquiry. It is a very bad place to end an inquiry.

That said, if you couple the video with the narrative of events propounded by Investigators so far, with the potent qualification that much else may come to light in the fullness of time, the officers confronted what they believed to be a man with a gun in his hand. A gun is a deadly weapon. The hand is a delivery system for that deadly weapon. He refused repeated requests to drop the weapon. To say that the officers on the scene could not reasonably have thought that a man with a gun in his hand, refusing requests to drop it, represented a threat of serious harm or death to themselves or others, strikes me as at least groundless and, at worst, tendentious. The subject's posture or the momentum of his gait in this case, which I have heard cited as proof that he was not a threat even though he had a gun, in his hand, that he refused to drop, has very little significance, tactically or otherwise. Nothing prevents a person from shooting while backing up. And the person can do so in a fraction of a second. To commence an action takes, on average, about a quarter of a second. To pull the trigger of a firearm takes, on average, a quarter of a second. So, at any time, in principle, it would have taken the man about half a second to start shooting. This is no small point tactically.

Finally, case law guides, or in any case should guide, an officer in these volatile circumstances. And the courts are very consistent about the "reasonableness" of using deadly force when a person has a weapon in the hand. In broad outline, this incident shares important similarities with a case, *Biggs v. City of New York*, adjudicated by the Second Circuit--not the most conservative circuit in the country--in which NYPD officers surrounded a person with a knife. The subject was told repeatedly to drop the knife. He refused. At length, one of the officers shot. The court assessed the officer's action as reasonable under those

circumstances. In essence, the court said that officers are not obliged to wait for someone with a lethal weapon in his hand to attack before they take action because that would *require* them to accept a tactical disadvantage in a potentially lethal encounter. Another case of relevance is *Montoute v. Carr*, adjudicated by the 11th Circuit. *Montoute*, plaintiff in the case, was fleeing police officers with a shotgun in hand. He never turned on them or raised his weapon. Officers shot. Again, the court averred that the actions of the officer were reasonable because, among other considerations cited, nothing prevented *Montoute* from turning around at any time with his shotgun and "drawing a bead," in the words of the court, on the officers pursuing him.

Cumulatively, these factors tend to suggest that, at present, the actions of the officers in Charlotte, while yielding an unfortunate tragedy, were not unreasonable.