

Re- Matthew Burroughs investigation,

My name is Brian Rizzo. I'm an Associate Professor at Westfield State University and a former officer of the NYPD. I base my view of the incident with the understanding that in use of force cases, the "objective reasonableness" standard is based not on 20/20 hindsight, but on the perception of a reasonable officer, who may actually be on the scene or faced with a similar situation. This is why the public and the police can hold divergent views on what is appropriate and justified police use of force when presented with the same evidence. The determining factor, from the standpoint of a reasonable officer on the scene, or in the absence of other officers present, from the standpoint of officers in similar situations, whether the officer involved in the use of force actions were objectively reasonable. If the facts show the action taken was objectively "unreasonable" within the law or policy then the officer must be held accountable.

In this case, we have some video, coupled with some official reports to attempt to discern whether the officer(s) used the amount of force "necessary" to stop the threat. I will do my best given the available evidence (e.g. BCW footage, OBCI investigation Report, Niles Duty Captain Report, Niles Firearms Discharge Report, etc.). I approach this examination with the caveat that my assessment is based solely on what was publicly released by the Niles Police Department. What follows is my best interpretation of the material provided. It is to the best of my knowledge an objective evaluation of whether deadly physical force was warranted by any of the police officers involved.

For an officer on the scene, he or she must respond to what is happening in real time. Looking back at an event in which the end is already known is very different than what one experiences as the incident unfolds in a dynamic fluid evolving series of events. Police officers learn the law regarding the use of force in the police academy, the so-called "continuum of force" model, but there is another way. Probationary officers are inculcated into their respective police cultures. Field training officers (FTO's), and veteran or "seasoned" officers shape the young officer who is too eager to be accepted and "fit in." Statements like "I'd rather be tried by six than carried by twelve" is representative of this culture. If an officer engages in excessive force, or unnecessary force, it is common to legitimize his or her actions by preparing supporting documentation which provides a narrative with language taken verbatim from case law to provide cover that the force used was "reasonable." In use of force cases training and policy also shape the officer's mindset about use of force. It is interesting that the Niles policy on the use of force directive is titled, "Response to Resistance/Firearms Policy" rather than the "Use of Force," or "Force Guidelines." The more combative "Response to Resistance" instills in the officer that "resistance" is key to using force and de-escalation as a response to resistance/uncooperativeness is not the preferred method. The term de-escalation does not appear anywhere in the policy directive provided.

In viewing the Niles Police shooting of January 2, 2019, it is my opinion that Officer Mannella's response to the threat posed was neither, "logical, reasonable, or necessary." These three components are listed in Policy 1.4 Procedure, 1.41 Parameters for the Use of Deadly Force or Firearm, Section III. In coming to this conclusion I applied the standard put forth in *Tennessee v*

Garner, and *Graham v Connor*; the leading cases on police use of force. The first case covers when a police officer can use deadly physical force, and the second case introduces the “objective reasonableness” standard. I believe that Officer Mannella’s use of deadly physical force was in response to the actions of Mr. Burroughs was unnecessary as Officer Mannella appears to have fired into a stationary vehicle. Firing into a stationary requires a different act/actions by occupants in the vehicle. Officer Mannella, despite his attempt to construct a scenario that has the car bearing down on him, does not appear to be in a “do or die” situation. The one witness closest to the Mannella and he states Mannella was backing away and giving verbal commands.” Mannella himself is heard on the audio (BWC) saying, “Stop, Stop, Stop.” As Mannella was “near the right front corner of the vehicle and fired diagonally across the hood towards the driver seat” he appears out of direct impact of what is clearly evident a stopped vehicle, or at least a vehicle that is stationary. Brake lights can be seen activated as Mannella shoots. Whether Mr. Burroughs braked in order to back-up and elude Officer Mannella, or was surrendering, is open to speculation, but what is appears certain is that the vehicle was stationary and not advancing on Mr. Burroughs and Mannella it was not unreasonable to expect that Mannella could have just as easily decided to evade Burroughs as it was to shoot him. I believe the formal and informal culture of the Niles Police Department impacted his decision toward using force rather than de-escalating.

If Officer Manella worked for the LAPD, or NYPD he would be trained not to use deadly force at a moving vehicle unless deadly force was being used other than the vehicle. Simply, Mannella would have had to get out of the way of the approaching vehicle. For the average non-police person this option seems the most reasonable. However, for a member of the Niles Police department the most reasonable thing to do is stand your ground and shoot to stop the threat posed by the advancing vehicle. In the hierarchy of force against moving vehicles standing in the way of the vehicle, and risk getting hit, is the right thing to do in Niles. Mannella has enough time to tactically assess the situation as Burroughs comes down Royal Mall Drive. He can seek cover behind the dumpster fence, stay on the sidewalk/grass area.

Assessment of events of January 2, 2019

Officer Mannella – Officer Mannella stated, “I shot to stop him from basically running me over” which translates into Manella “fearing for his life,” the minimum standard for use of deadly physical force by a police officer. Mannella fired three shots “center mass” into the vehicle hitting/killing Burroughs. Mannella claims he was in front of, about the middle of, the vehicle when he fired. Officer Manella could have been in front of the vehicle initially and moved to the side as the vehicle approached and then began shooting. Although it is clear the vehicle is stationary in the video presented, witnesses state that the vehicle was moving just prior to the moment Mannella began firing. We have Officers Manella, Hogan, and civilian witness attesting to the fact that the vehicle was moving forward and reverse immediately prior. From Officer Reppy’s BWC it appears the vehicle is stationary when Officer Reppy exits his cruiser and

begins shooting. Officer Manella appeared to have already stopped firing and moved away as Reppy's bullets were fired.

If Mannella's actions placed him in a position that deadly physical force became the only option based on the perceived threat of death or serious physical injury does that raise Mannella's culpability? Regardless of how Mannella got to the point of using deadly physical force is not important in assessing whether his use of force was justified. If Mannella was sloppy, clumsy, negligent or employed poor tactics it would not make an actual threat less dangerous. Likewise, fabricated statements by officers involved cannot make an unreasonable use of deadly physical force reasonable.

It seems counterintuitive that Officer Mannella, instead of taking cover, decides it is best to stand in the street as Burroughs advances. Mannella states to investigators, "I'm standing in his way." Mannella mentions he knows Burroughs hit a guy downtown with his car in what I believe is a feeble attempt to show how Burroughs dangerousness. Instead what he shows is poor judgment. Unless at the time Mannella approached the vehicle, Burroughs braked and the car was stopped. We hear Mannella yelling Stop! Stop! Stop! just seconds before beginning to shoot. The BWC shows the brake lights illuminated when Mannella begins shooting. Did something in the vehicle spook Manella? If so, there was no mention of it in the three investigations and news release. According to Manella he shot because he "feared for his life" the only reason he can shoot at a moving vehicle, but he shot at a stationary vehicle, and here the reason to shoot is if there is a separate threat because the vehicle, however fleeting, is not a threat if it is not moving.

Mannella knows his best justification for using deadly physical force is to place himself in the middle of the vehicle, "Now I'm pointing a gun at him, standing approximately in the middle of his car because I can see the hood emblem right there." The shots in the front windshield are not consistent with someone firing in the middle of the vehicle, but more consistent with someone standing near the passenger front or side of the vehicle. The only independent witness (Cappy) states Mannella, "jump...to one side and then drew his gun." Cappy also states, "...when they shot, I feel like [the vehicle] was in the stop position."

The only way Mannella could be justified in shooting a stationary vehicle is if Mannella saw Burroughs brandishing a deadly weapon, thought he saw a Burroughs reach for a deadly weapon, or believed Burroughs was about to take his foot off the brake and advance toward him. Neither Mannella nor anyone else states Burroughs had a firearm on his person, or that there was one under the seat, in the console, etc. Here's how Mannella describes his decision to use deadly physical force:

I knew he wasn't going to stop, hands still on the wheel looking directly at me, car coming at me. I fired three rounds into the windshield at him. I was aiming for center mass. You know, I shot to stop him from basically running me over. I knew he was coming and I knew from previous, the call downtown he already hit the official, the court

official with the car, so I'm standing in his way and I heard Reppy's shots go off almost simultaneously with mine.

If Reppy and Mannella shoot "almost simultaneously" then they corroborate the potential threat of serious physical injury or death and each becomes to the other the "objectively reasonable" officer in *Graham v Connor*. The only problem is that Mannella stopped shooting before Reppy started shooting, and more importantly, the vehicle was stationary with the brakes applied. According to Reppy he fired five shots to stop the threat to Mannella, "I'm seeing this guy...he looks like he's about to run over Officer Mannella."

The other officer on the scene was Officer Hogan. He claims he could not ram the vehicle because there was "no time" to act. Hogan has time to think, but not react. Wouldn't a brother officer have tried anything at that point if you thought Burroughs going to run over Mannella? Maybe he didn't perceive an imminent threat of SPI or death. Is Reppy's shooting "objectively reasonable" if Mannella and Hogan, both of whom are closer and with a better vantage point to see Burroughs, are not shooting? In all the excitement did Reppy make an incorrect assessment as to the threat, or use poor judgment in determining the ongoing threat?

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