

Atlanta cop who killed Rayshard Brooks charged with felony murder, could face death penalty

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Fulton County District Attorney (DA) Paul Howard announced at a press conference Wednesday afternoon that his office is charging Officer Garrett Rolfe, the white cop who brutally killed Rayshard Brooks, a young African-American father of four, on Friday evening in Atlanta, Georgia, with felony murder. He also provided new, morbid details about the evening in question, including photographic evidence that Rolfe kicked Brooks while he lay on the ground bleeding to death.

The felony murder charge is one of eleven charges being made against Officer Rolfe and is potentially the first time that a police officer in the United States has been threatened with the death penalty for an active duty killing since NYPD lieutenant Charles Becker was convicted and executed in 1915.

Another development which makes the Brooks case remarkable, according to Howard, is that the second officer involved in the incident, Devin Brosnan, has offered to cooperate with the state and testify against Rolfe. This is an unprecedented development, according to the DA. Howard also related that within a few days Brosnan would make a public statement about the culpability of Officer Rolfe.

However, Howard's remarks were quickly contradicted by Brosnan's attorney, who stated after the press conference that while his client had agreed to cooperate with the DA he had not agreed to be a state's witness or testify in the case.

Howard explained that his office was able to review an unusual amount of evidence for this case, including eight different videos, which they were able to enhance; physical evidence, including the Taser and the Chevrolet Trailblazer which was struck by one of the three bullets fired by Rolfe; as well as Brooks' preliminary autopsy and preliminary ballistics report. Howard reported that this is the fourth time that the Fulton County District Attorney's office has had to ask that arrest warrants be issued before an indictment and only the fortieth time prosecuting a police officer for misconduct. It marks just the ninth case of alleged homicide by a police officer handled by the office.

Howard began by describing what is apparent in many of the videos which have already gone viral on the internet. "Brooks was calm, even cordial. Even though he was impaired, his demeanor was almost jovial. We noted that he received many instructions from the Atlanta officers, some of which were asked repeatedly. For 41 minutes and 7 seconds, he followed instructions and

answered questions."

According to Howard, "We concluded that Mr. Brooks never presented himself as a threat. He was peacefully sleeping in his car. After he was awakened, he was cooperative. He was directed to move his car, and he calmly moved his car. He was asked whether he had a weapon. He indicated that he did not. Without resistance he passed his license to officers. They then asked for a body search, and he allowed this. It yielded no weapon."

Howard noted several "considerations" that led them to make so many charges against Officer Rolfe. The first was that Brooks was never informed that he was under arrest for DUI. In bodycam video available online, one can hear Rolfe state, "I think you've had too much to drink to be driving, so put your hands behind your back for me." He then began, as Howard described it in yesterday's press conference, grabbing Brooks from the rear and trying to physically restrain him. Howard noted that Atlanta Police Department (APD) procedures require that people be informed immediately that they are under arrest.

During the course of the struggle, Officer Brosnan pointed his Taser at Brooks, who then wrested it away and ran away from the two officers. It was at this time that Rolfe fired his own Taser at Brooks, who continued to run away with the Taser wire visibly attached to his body. Howard explained that the City of Atlanta forbids officers from firing a Taser at someone who is running away. This of course is also the case for firing a handgun at someone who is running away.

Howard also gave the precise distances between Rolfe and Brooks, both when Brooks fired the Taser he had captured wildly behind himself and when Rolfe actually fired his handgun at the victim. When Brooks turned around and saw Rolfe drawing his handgun, he tried to fire the Taser he had acquired behind himself as he continued to flee. Howard reported that the Taser was fired above Rolfe's head and that the two men were 12 feet apart.

Seconds later, when Rolfe gunned down Brooks in the parking lot, the two men were 18 feet and 3 inches apart. This evidence made them conclude that Brooks was running away at the time that the shots were fired. Howard reported that two of the shots were fired into Brooks' back and that one of these was a center shot that penetrated his heart.

Another consideration when charging Rolfe for felony murder was what they call an "excited utterance," an immediate statement

that is considered highly reliable since it is made in the heat of the moment without the ability to consult with legal counsel. Howard related that they have evidence that Rolfe uttered, “I got him,” immediately after gunning down Brooks in the parking lot.

Perhaps the most disturbing facts that emerged from Wednesday’s press conference were reports that Rolfe then kicked Brooks, who was lying in the parking lot bleeding to death. Both officers then stepped on Brooks. Howard explained that Atlanta has a policy requiring police to provide timely medical attention to anyone who is injured. “For 2 minutes and 12 seconds there was no medical attention applied to Mr. Brooks.” Kicking and standing on Brooks was of course the opposite of providing medical attention.

Howard explained that the demeanor of the officers immediately after the shooting, including the “excited utterance,” did not reflect any fear or danger of Brooks. Howard referenced two foundational cases that support the legal conclusion that officers may not use deadly force to prevent escape unless there is probable cause that the escapee poses immediate threat of death or serious physical injury to an officer. This should also be based upon the feelings of a “reasonable” officer on the scene, not the individual officer involved. “We concluded that [Brooks] did not pose an immediate threat of death or physical injury to the officers,” Howard announced.

One final piece of evidence that led to the charges was the fact that the Taser held by Brooks had already been discharged twice when Rolfe fired his handgun into the victim’s back. Howard explained that “once it is fired twice, it presented no danger to him or any other persons.” This means that the “debate” that has emerged in the media over the past few days about whether or not a Taser is lethal is irrelevant.

The charges against Officer Rolfe are felony murder, which means that the death was the result of an underlying felony—in this case, aggravated assault with a deadly weapon. The other charges are for aggravated assault, violations of office and four charges for firing his handgun towards the Chevrolet Trailblazer which was struck by one of the three bullets. One of the charges is for property damage to the truck and the other three are for firing toward each of the three passengers who were present in the vehicle.

The attorney representing these three witnesses also spoke at the press conference, explaining that all three are traumatized from having to watch the brutal murder of Brooks only a few feet away. They also reportedly corroborated the evidence presented by the Fulton County District Attorney.

The felony murder charge could result in life in prison without parole or the death penalty and most of the other charges carry a sentence of one to twenty years in prison. Officer Brosnan was also charged with aggravated assault and two violations of oath, due to the fact that he stood on Brooks’ shoulder, which he has admitted to doing. When asked why he did this, he replied that he was not fully aware of what was going on and became worried that Brooks may have had a weapon. Howard commented that his office found this strange since Brooks had already been checked for weapons.

Many of the speakers present at the press conference described

Officer Brosnan as “courageous” and an example of the kind of changes that need to take place among police all over the country. It is likely that he will be used as a poster child for police reform by the Democratic Party moving forward.

Howard said that they are asking both Rolfe and Brosnan to surrender themselves by 6:00 p.m. today and they are recommending that Rolfe be held without bond. Since Brosnan has volunteered to cooperate, they are asking the court to grant him a bond of \$50,000.

One further detail came out of the question and answer portion of the press conference—that Officer Brosnan is newer to the police department and was not an experienced DUI investigator. However, Brosnan called Officer Rolfe specifically, who has extensive experience with DUI incidents. Brosnan reportedly told the DA that he was surprised that the situation then accelerated into an actual arrest.

In the video footage available publicly, Brooks can actually be heard, prior to allegedly failing his breathalyzer test, asking if he could just lock up his car and walk to his sister’s house a short distance away. Experts have explained in recent days that officers have a lot of leeway when it comes to making arrests and that Rolfe and Brosnan hypothetically could have helped him get home safely without an arrest.

In May 2019, Rolfe was “honored” by Mothers Against Drunk Driving (MADD) for making more than 50 arrests of people driving under the influence during the previous year. Reports are also emerging about previous incidents of “use of force” complaints about Rolfe along with accusations that he covered up a police shooting in 2015.

Howard told reporters that, due to the COVID-19 pandemic and the fact that they have seven other cases scheduled ahead of this one, they might have to wait until January or February to get an indictment from a grand jury allowing for court proceedings to move ahead. Howard said that he has recently put together a list of recommendations, including that prosecutors should be allowed to issue indictments without a grand jury when they involve police shootings.

“If I had the authority, I would sign them today.”



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