

The Investigation of a Police Action Shooting Resulting in the Death of Dylan Wade Bush 21 ISPC 015581

1. Introduction

The primary events pertaining to this case occurred in the afternoon of Sunday, November 28, 2021. The Indiana State Police was immediately engaged to investigate the circumstances that resulted in the police action shooting death of Dylan Bush. The sources of information for the investigation included: recorded interviews of all material witnesses; police dash board video camera footage; surveillance camera footage at the BP gas station and Park N'Shop; CAD reports from both Marshall County Dispatch and the ISP Dispatch; 4 separate Standard Crash Reports; Culver-Union Township EMS Prehospital Care Report; reports from officers of the respective departments, including investigators assisting with witness interviews; recorded radio transmissions and 911 calls; numerous photographs and scene diagrams; ISP Crime Scene Investigator narrative; autopsy and toxicology reports; and several other immaterial items. The professionalism displayed was extraordinarily exceptional at all levels from all departments.

2. Statement of Facts

At 2:04 p.m., an employee at the BP Express gas station, 203 N. Main St., Culver, telephoned Marshall County Central Dispatch to report "a customer here that is quite visibly drunk, , , purchased a bunch of alcohol, put it all back on the shelves, , ,took it off the shelves. . . ." The objective of the call was to secure a law enforcement officer's assistance to remove the intoxicated patron from the property.

As the same call continued, the employee reported the individual was driving away in a white Chevrolet Cavalier. Other information conveyed to dispatch through the same employee of BP was the license plate number TCN974 and that a large bottle of Jack Daniel's Whiskey was in plain view within the vehicle.

Standard procedure was followed by MC Central Dispatch to immediately radio for assistance from the primary jurisdiction of the Culver Police Department. Officer Nicholas Fobert responded at once from the Culver Police Station in a fully marked police vehicle. Officer Fobert verbally speculated to MC Central Dispatch the driver of the white Cavalier may be Dylan Bush. In a subsequent interview, Officer Fobert explained his early identification of Dylan Bush as the possible driver was based on his prior experience and interaction, as well as Mr. Bush's reputation for similar intoxicated conduct.

Officer Fobert drives first to the BP station where he is immediately informed the Cavalier just departed headed west on Washington Street. Officer Fobert directly drives west on Washington; soon turns south on Ohio Street; and then west on Jefferson Street where by radio he reports sight of the white Cavalier approaching S.R. 17. The time noted by the MC Central Dispatch CAD system is 2:06 p.m.

After stopping at the intersection of S.R. 17 and Washington St., the Cavalier continued across S.R. 17 and turned south on Thorn Road. During the Cavalier's turning maneuver, Officer Fobert reported he was close enough to see the driver drink from what Fobert identified as a possible beer can; he could not identify the driver however.

Officer Fobert caught up to the now faster moving Cavalier on Thorn, a gravel road. He reported the speed as "fast," although no numerical speed was established or estimated. Fobert now activated his red and blue emergency lights to effectuate a traffic stop but the Cavalier did not slow down. The time noted by the MC Central Dispatch CAD system was 2:07 p.m. This marks the beginning of the vehicular pursuit.

From Thorn Road, the Cavalier turned east on 19th Road and then south on S.R. 17. At 19B Road the Cavalier turned west and Officer Fobert now activated his siren. Continuing west on 19B Road, the Cavalier then turned south on Upas Road. Based upon past information about previous driving conduct of Dylan Bush, Officer Fobert reported to MC Dispatch that he suspected the Cavalier was headed to Dylan Bush's house on Upas Road.

Eventually the Cavalier turned west into the driveway at 19949 Upas Road and proceeded at a very low rate of speed, but still would not stop. Officer Fobert drove around the Cavalier and angled his vehicle in the front of the Cavalier blocking it from any further progress into the drive. As he drove around the Cavalier, Fobert could now for the first time clearly identify the driver as Dylan Bush. He also could see Dylan Bush drink from a beer can and soon display a vulgar finger gesture toward him.

Effectively preventing the Cavalier from proceeding any further into the drive, Bush stopped momentarily and then began driving in reverse eastward out of the drive onto Upas. Still in reverse, the Cavalier traveled south on Upas until its intersection with 20A Road, whereupon Bush stopped in the roadway and then proceeded forward and eastward on 20A. Officer Fobert reports pursuing Bush at a high rate of speed on 20A with Bush appearing more than once to almost lose control of the Cavalier.

Bush now turns north onto S.R. 17. Officer Fobert observes the Cavalier traveling at speeds in excess of 96 miles per hour in a posted 55 m.p.h. zone. Bush slows and turns east onto Mill Street and then into a relatively empty ACPI factory parking lot. Bush drives rapidly through the parking lot with Fobert in full pursuit with lights and siren non-stop. Bush exits the parking lot onto Mill Street and heads east. Fobert observes the Cavalier's speed in excess of 60 miles per hour in a posted 20 m.p.h. zone.

From Mill Street the pursuit continues north on Clymax Street, east on Madison, then south on South Main Street. Marshall County Deputy Cullen Smith now joins the pursuit with emergency lights and siren activated. Bush and the two pursuit vehicles turn east on Mill Street; then north on south Plymouth Street; then into the Culver Cove parking lot. Blocking maneuvers by the officers were unsuccessful as the Cavalier exited the parking lot and headed west on E. Madison Street; then north on S. Main Street where at an increasing speed Bush disregards the stop signs at Jefferson and Main and Lakeshore Drive and Main, abruptly turning west onto Lakeshore Drive. Bush continues west and takes the elementary school parking lot entrance just east of Slate Street. Exiting the parking lot onto Slate Street then immediately onto and through the property of Easterday Construction; back onto Slate Street headed north. Marshall County Deputy Anthony Bragg now joins the pursuit which turns east onto Academy Road at an increasing rate of speed culminating in excess of 60 miles per hour, disregarding the stop sign at School Street and the stop sign at N. Lakeshore Drive.

The pursuit continues east on Academy Road arriving at the Eppley Auditorium where the Cavalier enters the private parking lot and the three officers try unsuccessfully to surround and block the Cavalier from further movement. Instead, Bush returns eastbound on Academy Road. A third Marshall County Deputy, Anthony Styers, arrives and stops facing west on Academy Road. Bush stops just short of alongside Officer Styers' marked patrol vehicle and the Officer begins to exit his vehicle. Bush accelerates sideswiping the Officer's open door which forcibly closes the door against the Officer's legs causing bodily injury.

Bush continues on Academy Road as it swings to the north with three officers in loud and visible pursuit. At the junction of S.R. 10 a fourth officer, Rodney Rudd from the Argos Police Department is situated to block traffic on S.R. 10. Bush slows considerably and Officer Rudd maneuvers to stop Bush's forward movement, while Officer Fobert maneuvers along the driver's side of the Cavalier in yet another unsuccessful attempt to force Bush to stop. As he accelerates, the Cavalier strikes the front passenger side of Officer Fobert's vehicle causing damage.

Bush continues north onto Sycamore Road before he turns east on 16C Road, where the Cavalier reaches speeds in excess of 75 miles per hour. At this point there are five police units pursuing Bush: Culver Officer Fobert, County Deputy Smith, County Deputy Bragg, County Deputy Styers, and Argos Officer Rudd. Just east of the intersection with Queen Road, the Cavalier intentionally leaves 16C roadway north into an uncultivated farm field. Fobert continues to pursue Bush into the field for an estimated half mile before the Officer's vehicle becomes mired in mud and his participation in the pursuit is terminated.

County Officers Bragg and Smith continued a winding pursuit of the Cavalier through the field. Argos Officer Rudd initially remained on 16C attempting to predict the Cavalier's path of travel from the field back onto 16C. Bush continued to evade police, entered 16C again, and when officers tried to again box in the Cavalier, Bush put it into reverse and maneuvered around the officers entering a different farm field on the

southside of 16C. Argos Officer Rudd gave brief chase into the field only to return to 16C with a flat tire. As a result, Officer Rudd's participation in the pursuit is terminated.

County Deputy Styers followed County Deputy Smith into the field on the southside of 16C as the pursuit continued. Styers reports speeds of between 60 to 70 miles per hour giving chase to the Cavalier in the field. Bush then exited the field and entered Queen Road and eventually turned west onto S.R. 10. As the pursuit continued on S.R. 10, Styers reports Bush slowed to speeds fluctuating between 25 to 30 miles per hour.

As the slow pursuit continued on S.R. 10 and approached its intersection with Sycamore Road, another County police vehicle with lights and siren can be seen on Sycamore rapidly approaching from the north. This is Marshall County Deputy Sergeant Matthew R. Brown. Bush rapidly accelerates to a speed reported by Deputy Styers in excess of 100 miles per hour. But the Cavalier's speed deescalates quickly to 10 miles per hour as it approaches the intersection of S.R. 10 and S.R. 17 and turns south onto N. Lake Shore Drive. Here the pursuit continues at a reported speed of 12 miles per hour with four county officers in the following order: Officers Smith, Styers, Bragg, and Sgt. Brown.

Bush drives slowly past the entrance to Town and Country Liquor Store, past the entrance to the Culver Animal Hospital, past the entrance to Park N' Shop, activates his right turn signal, drives past the entrance to the First National Bank, and approaches the exit from the bank. An officer can be heard on loud speaker ordering Bush to stop. Bush does not comply. Sgt. Brown initiates a maneuver around the drivers' side of the three County police units in front of him and angles in front of the Cavalier at the bank's exit. The Cavalier collides with the passenger side rear quarter of Brown's vehicle causing damage. Bush stops momentarily. Officer Smith puts his vehicle at the right rear of the Cavalier; Officer Styers puts his vehicle at an angle along the right front of the Cavalier; and Officer Bragg places his vehicle behind the Cavalier and toward the rear of Sgt. Brown's vehicle. All officers exited their vehicles. Sgt. Brown draws his service weapon and aims in the direction of Bush all the while shouting commands for Bush to stop and show his hands. Officer Styers draws his service baton. The Cavalier continues to lurch and repeatedly strike the side of Brown's vehicle in an apparent attempt to realign the Cavalier in order to squeeze between Brown's and Styers' vehicles to effectuate his escape. Sgt. Brown has now placed himself between his vehicle and the Cavalier and continues to the driver's side window, shouting commands to Bush. Brown reaches and leans through the driver's window in an unsuccessful attempt to disable the vehicle and take control of Bush.

At that moment, Bush accelerates forward and at an angle striking and propelling Sgt. Brown into the side of his own vehicle. The force of the Cavalier striking Brown accelerated Brown forward and allowed him to escape the squeeze of the two vehicles whereupon he gained a strategic position toward the front and at the driver's side window of the Cavalier. Officer Styers proceeds to smash out the rear right passenger window of the Cavalier. The Cavalier lurches forward, appears to straighten its path but then jerks

to the left toward Brown's position. Three shots in rapid succession can be heard. Sgt. Brown falls to the ground. The time noted by the MC Central Dispatch CAD system that it was reported shots were fired was 2:38 p.m.

The Cavalier proceeds to the southside of the bank and follows the drive that traverses behind the bank which heads north toward the Park N' Shop parking lot via its entrance from the south nearest the store. All of the officers return to their respective vehicles and give chase. The pursuit ends very soon with the Cavalier striking head on an unoccupied GMC Sierra C1500 pick up truck parked very near the storefront. All indications are that it was not a high-speed collision with the GMC truck.

All officers immediately converge on the scene of the Cavalier's collision with the GMC truck in the Park N' Shop parking lot. Sgt. Brown draws his weapon and resumes loudly directing commands to Bush to "show your hands." Sgt. Brown opens the driver's door on the now stopped Cavalier. Deputy Smith, Deputy Styers and Deputy Bragg are all at the now open driver's door; two of the three pull Bush from the vehicle (probably deputies Smith and Bragg) and immediately attempt life-saving procedures. Deputy Styers joins in the rotation of efforts to perform CPR---cardiopulmonary resuscitation upon Bush. Sgt. Brown recalls calling for medical assistance, retrieving gloves and an AED—an automated external defibrillator.

At 2:40 p.m., the Culver-Union Township Emergency Medical Service is dispatched to the Park N' Shop parking lot. The ambulance unit had been previously "[d]ispatched to stage for a pursuit in progress[.]" and arrived on scene at 2:43 p.m. The paramedic in charge "[n]oted the scene to be secured and officers were performing CPR on a male near the collision." The county officers immediately surrendered patient care to the EMS personnel who then performed extensive paramedic procedures on Mr. Bush.

At 3:15 p.m., after consultation with the physician supervisor, the paramedic was authorized to cease CPR efforts. She then "[a]dvised dispatch to cancel [a previously requested medical] helicopter and contact the Marshall County Coroner."

The Marshall County Coroner arrived at approximately 3:40 p.m. and, pursuant to protocol, determined and subsequently certified Dylan Wade Bush died at 3:15 p.m. on November 28, 2021. The Coroner took custody of the body and arranged for x-rays and an autopsy to be conducted on November 30, 2021. The Coroner also obtained various bodily fluids from the deceased and arranged for an examination and report by a toxicological laboratory.

The autopsy confirmed the cause of death was due to gunshots. With the assistance of the x-rays, two of the three bullets were retrieved from the body of the deceased; the third bullet was found by ISP CSI in the passenger compartment of the Cavalier. The toxicology report revealed the presence of various compounds in the bodily fluid samples submitted, including cannabinoids, methanol, and a blood alcohol concentration of .230 g/100 mL.

3. Pursuit Policies of both Culver PD and MC Sheriff's Department

Culver Officer Nicholas Fobert was operating with information provided by MC Central Dispatch, direct eye witness observations, the officer's personal experience and direct observation of the Cavalier and its driver when he decided to make a traffic stop. Accordingly, Officer Fobert activated his emergency lights as he followed immediately behind the Cavalier at 2:07 p.m. Shortly thereafter, Fobert activated his emergency siren. Thirty-one minutes later at 2:38 p.m. "shots fired!" was broadcast from the scene. Retracing the path reveals the pursuit traversed 13.5 miles of roadway in addition to the unknown distance in the two fields described previously. Most, if not all, of the various pursuit vehicles operated with emergency lights and siren activated throughout the pursuit. Loud speakers were also used. All indications by Mr. Bush the entire 31 minutes were that he was not going to obey the emergency lights, siren and verbal commands to stop. The use of a vehicle while resisting law enforcement is a Level 6 felony.

Officer Fobert's vehicle became mired in mud shortly after the pursuit entered the farm field. At that point Culver PD ended its pursuit. A review of the Culver Police Department Policy Manual under Section V: PURSUIT POLICY, most notably subsection IV, leads to the conclusion that within the fact pattern described above, Officer Fobert at all times acted within policy parameters, particularly the original initiation of the pursuit itself.

County officers Smith, Bragg, and Styers and Argos Officer Rudd had all previously, at various points, joined in the pursuit. Shortly after the pursuit entered the farm field, the Argos police car sustained a flat tire ending Officer Rudd's brief participation. It was now exclusively a Marshall County Sheriff's Department pursuit.

Considering the totality of the circumstances and the fact pattern described above, it was reasonable and prudent for all participating Marshall County officers to continue to pursue the Cavalier and seek to arrest the driver even though the originating department and officer was involuntarily disengaged. Moreover, a review of the Marshall County Sheriff's Department Policy Manual under Section 13-3: EMERGENCY DRIVING PURPOSE, leads to the conclusion that County officers Smith, Bragg, Styers, and Sgt. Brown at all times acted within pursuit policy parameters.*

4. Use of Deadly Force Policy of Marshall County Sheriff's Department

Sergeant Brown was a late comer to the pursuit. He was still with family before his 3:00 p.m. start of shift when radio traffic made him aware of the pursuit in Culver. In response Brown clocked in early and headed immediately from the southside of Plymouth to the Culver area. Monitoring pursuit locations by radio, Sgt. Brown traveled south on Sycamore to its intersection with S.R.10. Upon his arrival, Sgt. Brown estimated

**But see, Section 13-3.2 M.a.: Discharging firearms at or from a moving vehicle is prohibited unless the offender is employing deadly force against the employee or private citizen.*

a mere hundred yards east was the west bound Cavalier. Witness accounts, confirmed by dashboard video, that upon Sgt. Brown approaching the S.R.10 intersection, the previously slow-moving Cavalier sped up to as much as 100 m.p.h., only to rapidly deaccelerate as it approached the intersection with S.R. 17. As the Cavalier slowly turned south onto N. Lake Shore Drive, officers followed in this order: Smith, Styers, Bragg, and Sgt. Brown. In his subsequent interview, Brown expressed concern the pursuit was now headed downtown Culver with restaurants and urban sidewalks close to the roadway. At that moment, Sgt. Brown decided to drive around the three officers and the Cavalier to cut off the Cavalier from advancing forward. It was a temporarily successful maneuver, although the Cavalier crashed into the back-passenger side quarter of Brown's vehicle causing damage.

The other three officers park around the Cavalier and all exit their vehicles and surround the Cavalier. Sgt. Brown drew his firearm and shouted commands to persuade Bush to stop resisting and show his hands. He did neither. It was then that after jostling the Cavalier to free it from the box-in maneuver that Bush drives forward at an angle striking Brown. The Sergeant is thrown against his own vehicle with such force that his holster and ammunition clips dent Brown's vehicle, leaving discernible marks on both the vehicle and the holster. Brown suffered an injury to his leg.

Earlier during the pursuit Dylan Bush used his vehicle three times to strike law enforcements' vehicles to assist in his avoidance of lawful detention. Now Bush used his vehicle to strike and injure a law enforcement officer during the performance of his duties.

As stated previously: "The force of the Cavalier striking Brown accelerated Brown forward and allowed him to escape the squeeze of the two vehicles whereupon he gained a strategic position toward the front and at the driver's side window of the Cavalier. Officer Styers proceeds to smash out the rear right passenger window of the Cavalier. The Cavalier lurches forward, appears to straighten its path but then jerks to the left toward Brown's position. Three shots in rapid succession can be heard. Sgt. Brown falls to the ground."

In his subsequent interview, Sgt. Brown described his thoughts and observations: "the car lurched and moved, so I jump back knowing that his car is now broke free from mine". . . [but] "before I can get out, he comes around and smashes me with his driver's side rear fender into my passenger side rear door." He later adds: "the only thing I thought was my leg is going to get run over." "[m]y momentum took me to the front, about front tire of my car maybe. I wanted to get in front of my car because I didn't want him to come back over and smash me again."

Other observations include: "he takes off for me and I fired off." When asked if he saw what caused him to fall after firing, Brown stated he "backed up to try to get out of the way" Asked if he saw the rock that may have tripped him, Brown stated: "I didn't see anything, I just knew he was [expletive] trying to run my ass over again." "I thought

he was trying to kill me with his car.” And later he emphasized again: “he was trying to [expletive] kill me with his car.” When asked what his objective was when he fired his weapon, Brown replied: “stop the threat.”

Restrictions on the use of deadly force by deputies are found in Section 10-1.3 of the Sheriff’s Department Policy Manual. The applicable language reads as follows:

- A. The use of deadly force against persons by employees, shall be restricted to the following:
 - 1. The officer reasonably believes the force is necessary to prevent serious bodily injury to himself or a third person. . . .;
 - 2. The officer reasonably believes that the force is necessary to effect an arrest for a felony, . . . and the officer believes that:
 - a. The crime for which the arrest is made involved conduct including the use or threatened use of deadly force or serious bodily injury; or,
 - b. There is substantial risk that the person to be arrested will cause death or serious bodily injury if apprehension is delayed.
 - 3. . . .
 - 4. Employees shall not:
 - a. . . .
 - b. Discharge any shots at or from a vehicle unless the offending [sic] is employing deadly force against the employee. . . .

The totality of the circumstances support Sgt. Brown’s belief deadly force was necessary to prevent serious bodily injury to himself. In addition, the evidence clearly established Bush was not going to stop on his own volition, and that deadly force was necessary to effect an arrest for a felony; and that the crime for which the arrest was to be made involved conduct that included the use or threatened use of deadly force or conduct that could result in serious bodily injury. Moreover, Bush’s refusal to stop established a substantial risk that he could cause death or serious bodily injury if his apprehension was delayed any further, the risk level significantly increasing as the pursuit headed to the urban setting of downtown Culver. Lastly, these beliefs by Sgt. Brown are reasonable such that a cautious and prudent officer in a similar situation would make a similar judgment. Accordingly, Sgt. Brown acted within the restrictions of the Sheriff Department’s policy on the use of deadly force.

5 Applicable State Statutes

Indiana Code 35-41-3-2 provides safeguards in the use of force to protect persons. Specifically, subsection (c) provides:

A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:

(1) is justified in using deadly force; and,

(2) does not have a duty to retreat;

if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person. . . .

Additionally, the use of force during an arrest is addressed in Indiana Code 35-41-3-3(c):

A law enforcement officer is justified in using reasonable force if the officer reasonably believes that the force is necessary to enforce a criminal law or to effect a lawful arrest. However, an officer is justified in using deadly force only if the officer:

(1) has probable cause to believe that that deadly force is necessary:

(A) to prevent the commission of a forcible felony; or

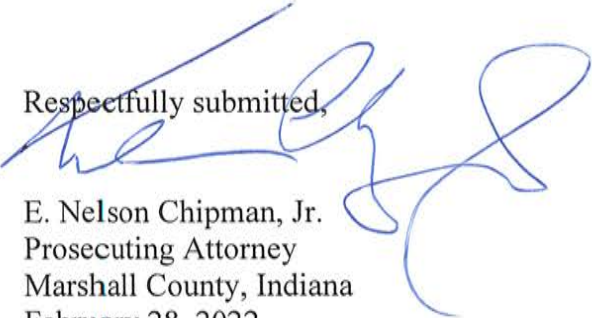
(B) to effect an arrest of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person; and

(2) has given a warning, if feasible, to the person against whom the deadly force is to be used.

Conclusion

Sergeant Matthew R. Brown fired his service weapon and killed Dylan Bush. Based upon the evidence collected, the circumstances deduced, and the application of department policy and state law, the undersigned determines that Sgt. Brown's use of his firearm was justified, and it's discharge proper and in accordance with departmental policy and applicable state law. Consequently, there will not be criminal charges filed in this case.

Respectfully submitted,


E. Nelson Chipman, Jr.
Prosecuting Attorney
Marshall County, Indiana
February 28, 2022