

# The AYOOB FILES

## PURSUIT OF AN ARMED ROBBER: THE BROOKER CASE

**Situation:** Robbed and terrorized by a criminal with a .38, a victim gives chase with a shotgun.

**Lesson:** It may be legal to pursue a felon with a view to citizen's arrest, but it's not always wise.

October 3, 1986. It's almost 4 p.m. on Friday afternoon and Bill Brooker is in a TGIF mood. His tiny office, Brooker Properties in Homestead, Florida has been a madhouse. Bill manages a large number of apartments, and today is rent collection day. In addition to taking money and giving receipts, he and his secretary give the tenants the courtesy of cashing their paychecks. The several thousand dollars in folding green stashed in the little cashbox always makes him nervous. Homestead and adjoining Florida City are both exurbs of crime-ridden Miami, after all. But, why worry? There's never been a robbery at the office.

Until now.

Someone is at the locked security door of the small office. Brooker sits at his desk attending to paperwork as his assistant Sarah Boleware goes to the door. The tall black woman finds herself looking down at a short, wiry black man who asks about a 10th Avenue apartment. Through the mesh screen of the security door, Ms. Boleware replies that it won't be ready for occupancy for another couple of weeks. The compact man in faded jeans and beige T-shirt asks for a phone number so he can call back. Sarah Boleware reaches for a business card and unlocks the security door to hand it to him.

And then she sees the gun. It's a Charter Arms stainless Undercover revolver with a two-inch barrel, concealed until now in a yellow hand towel behind the gunman's back. He shoves it through the open door with his left hand, into her face, and screams, "Get over there! This is a stick-up! Get over there!"

Brooker is only feet away. He hears the cry, and it occurs to him to go for the five-inch barrel Smith & Wesson Model 10 .38 revolver he keeps in a drawer behind his desk. But it's an aching long reach for the gun, and now it's already too late because the little robber has burst through the door and has his own .38 Special inches from Brooker's forehead. "This is a stick-up! Get up!"

Resistance would be suicide. Worse, thinks Brooker, it could get his faithful employee murdered along with him. He obeys the manic criminal's orders and lies on the floor next to Boleware, his arms extended, face down. He is wondering if he will ever see his wife and children again.

He has good reason to worry. The man with the gun is Terry Johnson and though only in his early twenties, he already has the proverbial "record as long as your arm," a rap sheet that extends from shoulder to fingertip when you unfurl the printout, and laced with crimes like armed robbery and aggravated assault. As his free hand roams across the desk seeking the cashbox, Johnson yells, "Don't look around, motherf\*\*ers, or I'll blow your motherf\*\*in' brains out!"

Brooker believes him with all his heart. There is angry rage in the gunman's voice. And Brooker knows that the shiny snubnose revolver is loaded. His strongest memory of having the gun pointed at him will always be the bullet noses peeking at him out of the chambers, some hollowpointed and some solid.

And now, the horror grows worse. Johnson sets down the cashbox and kneels next to the two victims, pawing them roughly as he gutturally repeats his threat to "blow their brains out." Brooker can feel Sarah Boleware next to him, trembling violently and uncontrollably, and for the first time fear gives way to anger. This good woman has done nothing to this man, nothing at all to deserve the mind-numbing terror the gunman is inflicting on her. Brooker scarcely feels the ripping pain as Johnson tears a gold chain off his neck.

The gunman grabs the cashbox and heads for the door. He comes face to face with Samuel Allen, a black employee of Brooker Properties. Johnson levels the gun at him and snarls, "Nigger, run!"

Allen runs. The fearful words that echo in his mind are not the threat directed at him, but the sentence he heard Johnson coldly utter a moment earlier as he pointed his gun at the heads of the white man and the black

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woman on the floor: "If you move, I'll blow you away."

The leering gunman is alone in the doorway now, the predator triumphant. He turns with one final warning for Brooker and his secretary. "If you chase me or call the cops, I'll blow your motherf\*\*\*in' brains out!" Then he turns, and is gone.

Shaken, Brooker rises to his feet, helping up the near hysterical Sarah Boleware. The fear is not entirely gone, but it is giving way to righteous indignation. The gold chain and the few thousand dollars are not in the forefront of his consciousness: terror is, the terror the gunman has caused.

Brooker darts into the back room. There he keeps the office's second protection gun. It is a Savage model 77 pump shotgun, its barrel cut to legal length by the original owner who had given it to Brooker for a rent settlement. An enthusiastic deer hunter, Brooker has loaded the gun with his favorite whitetail shell, 12-gauge Magnum Federal #1 buckshot.

Brooker runs out the door clutching the loaded shotgun and yells at his secretary, "Call the police!" Turning the corner of the little office building, he sees Johnson running, about a 50 yard shot from the cover of the concrete structure. It would be an easy shot, with at least seven or eight buckshot pellets probably striking at that distance, and there are no bystanders in the way. But Brooker doesn't want to kill his tormentor. He wants to capture him, to watch the police take him to jail.

The real estate man jumps into the company car that's parked at the curb, a brown Dodge 600 compact sedan. It's heading the wrong way, and he has to drive down a street, cut over, and come back up. One hand is on the wheel. The other holds the pump gun upright in the front seat, like the dashboard shotgun carrier in a police cruiser.

The chase runs more than half a mile. Brooker sees his antagonist up ahead now, still with the shiny revolver in his hand and still on foot. He runs across the street in front of Brooker, right to left, sprinting across the lawn of a suburban home.

Brooker squeals the little Dodge to a stop by the sidewalk, the left side of his car toward the gunman, who is almost at the corner of the house. Brooker yells for the robber to halt.

Johnson turns.

So does his gun.

What happens now takes probably no longer than a second, but in the mind of Bill Brooker it will be the longest second of his life. It is said that those who face death sometimes see their lives pass before their eyes. The images that flicker through the mind's eye of Bill Brooker are those of his family, of a long-forgotten small arms instructor from his many years of National Guard service, telling him how quickly the enemy can kill, and of Terry Johnson growling, "If you chase me or call the cops, I'll blow your motherf\*\*\*in' brains out!"

And then there is no image but the tiny black eye of the .38's muzzle as Johnson brings it around in his left hand, half turned, as if to fire over his right shoulder at Brooker, who is only 50 feet away.

Brooker's left hand is still frozen on the steering wheel. His right hand, on the pistol grip of the shotgun, swings the weapon up and over in one last desperate reach for survival. The slide of the pump gun touches his bicep just above the elbow and Brooker can see the long black snout of the barrel pointing at his antagonist, can still see the .38 coming up on him.

He fires.

He does not feel the recoil of the 12-gauge Magnum blast. He sees the muzzle of the shotgun jump, but he also sees Terry Johnson jerk violently as if cuffed by a giant unseen hand. Johnson sprawls to the ground, the stainless revolver with its black neoprene grips only inches from his hand.

Brooker pulls the Dodge out of the roadway so there won't be an accident and jumps from the car, the shotgun still in hand. It hasn't yet sunk in that Terry Johnson is no longer a threat.

Johnson moves and Brooker, not knowing how badly he is hit, levels the shotgun at his head. "How does it feel?" he yells at the downed gunman, meaning how does it feel to be the one on the dangerous end of a gun.

But Terry Johnson can't hear him. Most of the blast of buckshot, 15 of the 20 lead .30-caliber spheres, have caught Johnson in the posterior right side just behind the lateral midline. The pellets course through heart and lungs, right to left, most of them lodging on the opposite side. Johnson tries to push himself up on his arms, then collapses.

The movement startles Brooker, who realizes to his horror that the man might go for the gun again. He can't remember if he pumped the action to chamber a fresh shell or not. He does so, sending a smoking empty spinning from the gun as a second Federal load racks into the chamber. It has been about 15 seconds since he fired the shot, but time is suspended, meaningless now amidst the enormity of what is happening.

At that precise moment, Officer Gail Bowen of the Florida City Police Department rounds the corner and brings her patrol car to a halt. The message from Sarah Boleware had already been transmitted, and Bowen had been responding when a man had flagged her down and told her of a

suspect fitting Johnson's description running southbound on 6th Avenue toward Lucy Street. Aiming her cruiser in that direction, she had heard the shot.

Now she exits the vehicle to see what she will later describe as "a white male standing with a shotgun in his hand . . . he took the action of the shotgun slide and brought it to the back ejecting a shell and bringing it forward again." Advising Dispatch of what was happening, she then moves forward toward Brooker.

And something very unusual happens. Officers are taught to treat any unknown person with a gun as a hostile, and to cover them with a drawn service revolver. Responsible civilian instructors warn their students that responding cops are quite likely to mistake them for bad guys and shoot them if they're standing around brandishing guns.

She sees the prostrate, blood-soaked man Brooker is standing over and she knows he has shot him down. Yet her five years of police work have given her a feel for criminal and victim. At this moment, she does not feel threatened. Instead she orders him, "Put the gun down."

Brooker stands speechless, unresponsive for a second, still in shock. He has just shot a man who terrorized him with a gun, and that man now lies there with the same revolver within his reach. It is unthinkable to put down his own gun, to be vulnerable to this man again.

Bowen shouts again, "Put the gun down!" Brooker finds his voice and yells back, "He had a gun at my head! He had a gun at my head!" Brooker points to the ground near Johnson and cries, "There's the gun. There's the gun."

And though she instinctively senses this man doesn't want to harm her, Bowen does what she has to do. Her hand falls to her holster and she commands, "Put the gun down or I'm going to shoot you!"

She does not have to complete the draw. Brooker complies, bending and laying the shotgun on the lawn, out of reach of Johnson. Bowen strides forward, and now she can see the fallen Charter Arms .38 in the grass next to the fallen man. She looks at Johnson in time to see him let out a deep sigh.

It is his last breath.

**B**ill Brooker did a lot of things right and a few things that could have been better handled. He was correct in judging that going for the .38 in his out-of-reach drawer would have been suicidal.

A handgun is generally a better weapon to employ than a shotgun during foot or auto pursuit due to superior handling ease and mobility. Yet Brooker's S&W was loaded with 158 grain roundnose lead ammo, a notoriously poor stopper. It is entirely possible that Johnson could have taken one or more hits from it and been able to return fire and kill or cripple Brooker, instead of being sledged down decisively by the single shotgun blast.

Still, when we re-enacted the shooting with a similar shotgun in the cramped front seat of the same small Dodge, we found the shotgun muzzle hung up on the upper part of the car door nearly half the time. Brooker was lucky that it didn't snag when he needed it.

The critical question, of course, is whether Brooker should have given chase. The anti-gun *Miami Herald* accused Brooker of being a vigilante who had hunted down Johnson and shot him from behind to recover his money and punish him for the robbery. In fact, Brooker had ample opportunity to shoot Johnson several times over from safe cover and didn't, because his intent was clearly to capture rather than kill.

In attempting the capture, Brooker risked his own life. Our re-creations, on shooting ranges and at the death scene, showed that Johnson could have easily shot Brooker to death within a second if Brooker hadn't reacted defensively. (There is reason to believe that Johnson turned to shoot, saw the shotgun coming down, and was beginning to turn away in the instant when Brooker fired. Brooker, of course, could not have been expected to perceive that under the life-threatening stress of the moment. As Justice Oliver Wendell Holmes put it so well, "Detached reflection is not expected in the presence of an upraised knife." Let alone the presence of an upraised Charter Arms .38, loaded in this case with a mix of ammo ranging from midrange wadcutters to +P+ hollowpoints. All five chambers of the gun were loaded at the time of Johnson's death.

Basically, pursuit of fleeing gunmen is most unwise for civilians, even though the law allows it. Had Johnson prevailed and killed Brooker during the gunfight on the lawn, he and his no-charge defense attorneys would have argued self-protection and might have made a case. The law holds that once a participant has broken off the fight and is challenged by another he is now technically the defender in a second conflict and the one who challenged him is technically the aggressor. Fortunately, Florida law is clear on this and Johnson would probably have gone to prison for killing the pursuing victim. Which would have been cold comfort to the dead Brooker and his bereaved family.

Brooker's ordering his secretary to call the police clearly showed that he had no intention of administering "do it yourself justice." What he didn't realize was that he had arranged for police to be notified that an armed robber was running around, and that he had set the stage for a mistaken identity situation in which he himself would be seen by responding officers only as "a man with a gun, there now."

What if the first responding cop had been a plainclothesman with drawn gun, whom Brooker might have mistaken for Johnson's accomplice? Multiple tragic scenarios suggest themselves. Gail Bowen, the uniformed cop who was first at the scene, must have since asked herself many times what would have happened if her character judgment had been wrong. She had stepped away from the

cover of her cruiser with a holstered weapon, and had Brooker been Johnson he almost certainly could have shot her to death before she could have even cleared her sidearm.

*Handgunner* readers who followed the case some issues ago where a cop "instinctively" recognized an armed citizen as a good guy instead of challenging him (resulting in the citizen shooting down a California copkiller) felt that cop's reaction was unbelievable. There have certainly been cases of well-meaning "armed citizens" being shot down by mistake when they attempted to assist police in shootouts. Yet what happened in the previous case clearly took place here: Gail Bowen obviously relied on her gut instincts, and in so doing perhaps kept Brooker from being killed by "mistaken identity friendly fire," a pattern of tragedy that has claimed too many good guys already.

Bill Brooker was charged with manslaughter. His was one of several incidents within a few days in which Miami-area citizens had killed criminals in self defense, and the *Herald* and other self-righteous editorialists were raving about "death-wish vigilantes" and home-grown Bernhard Goetzes. One of those citizens had been Prentice Rasheed, a black businessman whose homemade booby trap had unintentionally electrocuted a burglar. When the Grand Jury freed Rasheed, the *Herald* and others practically foamed at the mouth.

Clearly, a scapegoat was needed. Would it be the elderly woman who slammed the window down on the intruder climbing in a window and then beat him to death with a club? Certainly not.

But Brooker was white and had shot a black man, and the autopsy showed that the blast had entered behind the lateral midline as Johnson turned to bring his gun up on Brooker. When that happens, the DA has a "shot in the back" case that can be made to sound like an ambush murder to a layman. Indeed, virtually every *Herald* article on the highly publicized shooting referred to Brooker as having "shot Johnson in the back as he fled."

Brooker hired famous Miami defense attorney Jeff Weiner, who I thought handled the case brilliantly. Through press conferences, he made it clear to the public that Brooker, not the dead robber, was the victim. Though the press tried to make the shooting look racially motivated, a large amount of the community support that filled the Bill Brooker Defense Fund came from the black community. Brooker had lived there, been a fair and compassionate property owner instead of a slumlord, and had created many jobs there. The only racial connotation in the whole incident was the cruelly demeaning statement of the armed robber to one of his black victims: "Nigger, run!"

Odds were overwhelmingly in Brooker's favor as trial approached. Knowledgeable Miami lawyers were quoting 97% chance of acquittal. But the armed citizen was suffering the torments of the damned. "It was like I had a big red 'K' on my forehead, for 'Killer,'"

Brooker told me sadly. "People couldn't see me as *me* anymore. All they saw was that I had killed a man. If my family and my church hadn't stood by me so strongly, I don't think I could have taken it."

The pressures were enormous. Physicians diagnosed a severe heart problem that Brooker, in his mid-40s, had shown no signs of before. They said that the stress of trial might be too much for his heart to stand.

Meanwhile, the DA's office was well aware that they were trying to send to prison a man most citizens thought had acted in self-defense. "We didn't think we could win a guilty verdict from a jury," one of their spokesmen said later. They offered a plea bargain: no jail time, and withheld adjudication that would allow Brooker's record to be completely cleared in perhaps three years. It would also save the tens of thousands of dollars that Brooker, who had already poured a fortune into the defense, would have had to spend to try the case.

"It was an enormous weight off my shoulders," Brooker told me when it was over. Most people he knew understood that he wasn't "admitting he was dirty," that it was a medical decision more than anything else. The only real loss is the inability, with the same status as a convicted felon for the next few years, to have guns on hand. He feels a bit unprotected in the now-gunless office, and the deer hunts that were once the high point of his recreation are now spent wistfully with a camera.

There's little doubt in my mind that Brooker would have won, and none at all that the shooting was a justifiable homicide in self defense. The case against him was ludicrously weak. At one point when I was on the defense team the prosecutor asked me in deposition if my opinion would change if I could be persuaded that Terry Johnson was turning in an "innocent" manner toward Brooker. I asked, "Is the State going to contend that Terry Johnson was *innocently* turning with the revolver?" The prosecutor snapped back, "I'm here to ask *you* questions."

The Bill Brooker case is over now. In the moment of the encounter itself, the good guy won and the bad guy died. In the legal aftermath, the good guy won as much as the heart condition apparently induced by the stress of the case allowed him to fight for. As an unexpected bonus, the injustice suffered by Brooker turned his lawyer Jeff Weiner, an influential defense attorney and popular liberal talk-show host, from a vocal anti-gunner to an equally outspoken defender of the rights of responsible armed citizens.

And, like every such incident, it leaves in its wake lessons that other armed citizens can learn less painfully than the participant. It is unwise for a number of reasons to pursue an armed criminal once the initial threat has passed. The citizen who has grabbed a gun to defend his life will be reflexively unwilling to set that gun down, even when challenged by a uniformed police officer, and the tragic

implications of that are obvious. Once the court-dictated interval has washed Bill Brooker's record clean again, I would advise him to apply for a concealed carry permit and to wear his favorite handgun, a 15-shot Smith & Wesson Model 59 9mm auto, where he can reach it. There were numerous moments during the robbery in which Johnson's attention lapsed away from Brooker to the cashbox or to other victimized employees. Those would have been perhaps more advantageous times to act, had Brooker but been armed with a concealed handgun he could have reached effectively.

Finally, if I were Officer Gail Bowen's sergeant I would call her into my office and sternly counsel her never again to approach any armed man as she did Brooker, but instead to maintain distance, take cover behind her cruiser's engine, and have her weapon up and ready. Then, as soon as she left my office, I'd thank my lucky stars for having in my command an officer with the kind of character assessment skills under stress that Bowen exhibited that day, and with the courage to act upon them, thus preventing tragedy.

