



FORCE SCIENCE[®] NEWS

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With insights from Force Science Graduate, deputy found not guilty of manslaughter charge

I. With insights from Force Science graduate, deputy found not guilty of manslaughter charge
Part of an ongoing series on real-world successes

The shooting was predictably controversial: A sheriff's deputy fatally shot a black man with a master's degree in telecommunications, a steady job at an advertising agency, no criminal record, and a history of mental illness, who was carrying home an unloaded air rifle he'd just bought at a pawn shop.

And then there was a photograph taken by a civilian at the scene that seemed to contradict the statements of officers about the fateful confrontation.

Indicted for manslaughter, the deputy who fired two rounds into the subject's torso faced the possibility of 30 years in prison.

But when the case came to court, a detective sergeant and use-of-force expert with Force Science training was able to explain nuances of the encounter that helped convince the judge to exonerate the accused officer.



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Since his certification as a Force Science Analyst five years ago, Det. Sgt. Sean Visners of the Sunrise (FL) PD has testified as an expert witness or otherwise assisted in the legal defense of some 20 officers in the state of Florida who've been involved in on-duty uses of deadly force. All have been cleared of wrongdoing, with Visners' straightforward articulation of relevant Force Science research and scientific principles often affecting the outcome.

We reported one of these victories in a previous issue of Force Science News, #268 of 11/4/14. [Click here to read it in the FS News archives.]

RIFLE-TOTING SUSPECT. His latest case, which was decided this summer just past, began three years ago on a sweltering July afternoon near Ft. Lauderdale. A series of alarmed citizens called 911 to report that a black male, apparently in his 30s, was walking along a busy thoroughfare in the city of Oakland Park, FL, carrying a rifle.

A deputy, a sergeant, and a lieutenant from the Broward County SO encountered him on the grounds of a heavily populated apartment complex where, it turned out, he resided. At that point, "he was carrying the rifle horizontally across the back of his neck in a crucifix fashion," Visners told FSN.

Sidearms drawn as they followed him on foot, the LEOs repeatedly yelled commands for the man to drop the weapon. He ignored them and continued walking, as they kept up a shouted barrage of orders. Finally, near a swimming pool teeming with kids, he stopped and turned toward his pursuers.

Witnesses, including the three LEOs, "would later vary on what happened next," Visners

says. One witness stated that the suspect "began bringing the rifle over his head, while still holding it in a horizontal fashion." Another said the rifle was at port arms, "barrel up." The deputy who fired insisted that the man "was in the process of shouldering the weapon to fire it" at the officers.

"I've never been so scared in my life," the deputy said later. "I don't know if my heart can race any faster and my fear level can go any higher."

He rapidly squeezed off three rounds from his pistol and struck the suspect twice in the chest. The man was pronounced dead soon after he was transported to a hospital by fire/rescue personnel.

SEEDS OF DOUBT. For the dead man's family and community activists, elements about the shooting that fueled controversy were quick to surface.

- While the rifle bore a camouflage finish and looked identical to a typical .22 used to hunt small game, it was in fact a pellet gun—and unloaded at that. The man had bought it at a nearby pawn shop for \$100 just minutes before the shooting. Initially, at the clerk's insistence, it had been wrapped in a garbage bag for concealment but the bag was found stuffed in the suspect's back pocket after he was killed.

- The subject had been diagnosed with bipolar disorder and schizophrenia and within a week before the shooting had experienced a "psychotic episode" that had resulted in his involuntary hospitalization. His mental condition could cause him to experience delusions, hallucinations, disorganized speech, and irrational thinking

and behavior, according to medical records. Toxicology tests revealed that he was "not taking his prescribed medications," but cannabis was found in his system, which may have "amplified" his psychiatric issues.

- The conflicting witness statements about the gun's positioning sparked accusations that the deputy was lying about perceiving a life-threat. Although the suspect had first asked to purchase a shotgun at the pawn shop (declined because the shop didn't carry actual firearms), his family claimed he was "a gentle soul" who had no interest in guns. "They could have tackled him or just Tased him," his brother told reporters. "Why shoot him?"

- There was also much controversy about whether the man was wearing earbuds and listening to music as he walked, which might have prevented him from hearing the officers' loud commands to disarm. The officers insisted they didn't see any buds in his ears and, indeed, a set of white Apple earbuds was found in his shirt pocket post-mortem. But a resident of the complex who rushed to the scene after shots were fired produced a picture she'd taken of the mortally wounded suspect on his back with buds clearly in place in his ears. Survivors and police critics cried "cover up!" and again alleged the cops were lying.

MANSLAUGHTER. By standard practice, every OIS in that judicial circuit must be presented to a grand jury, but because of a heavy backlog of cases that review took more than two years to occur.

By then (last December), activist protests about police officers shooting black males had reached fever pitch nationally. The grand jurors returned an indictment of

manslaughter against the deputy who fired the fatal shots.

"Questions arose regarding why the other two officers didn't shoot if the suspect was indeed pointing the rifle at any of them," Visners explains. "The prosecutors felt the deputy was exaggerating what was happening at the time he discharged his handgun. No use-of-force expert was called to testify, although in the past this had been a routine part of grand jury presentations.

"In the end, the jurors did what no others had done in Broward County in the previous 30 years: they indicted an officer for a fatal police shooting."

The deputy, who earlier had been given a departmental commendation for bravery in the case, was now arrested and suspended without pay.

RESEARCH-BASED TESTIMONY. The deputy's lead counsel, Eric Schwartzreich, argued that the shooting was defensible under Florida's so-called Stand Your Ground self-defense law, which specifies that an individual has no legal obligation to retreat when facing a dire threat.

Last June, Circuit Judge Michael Usan heard six days of testimony on Schwartzreich's motion to dismiss the criminal charge against his client. Visners spent nearly four hours on the stand as a use-of-force expert for the defense, working to "facilitate the Court's understanding of human performance during the high stress of police shootings." He touched on these topics, among others:

- With regard to the conflicting descriptions of how the rifle was positioned at the moment of shooting, Visners likened the perceptions of the various LEOs and other witnesses to the "multitude" of video cameras present during an NFL game. A dozen or more hi-def cameras may capture the action from different angles, he explained, and conclusions about a disputed play can legitimately differ depending on the perspective from which it is recorded.

There was no doubt, however, based on physical evidence including the gunshot wounds themselves, that the subject was squarely facing the deputy when he was shot, giving the officer a unique angle of view.

- The deputy's narrowed "focus of concentration" would have been on the barrel of the rifle. It would be reasonable to believe that the only thing he actually saw was the "'blading' of the rifle's barrel" toward him, Visners testified. If so, his reasonable perception could well have been that the suspect was shouldering the weapon in preparation for firing from a traditional stance.

- The fact that the suspect "refused loud, continuous commands to drop" the rifle and then turned "toward the deputies while manipulating it in his hands gave instantaneous justification for deadly force to be deployed," Visners stated.

He detailed the Force Science Institute's landmark research on action/reaction times to underscore the urgency the deputy was under at that moment to stop a potential threat on his life. "A subject with gun in hand can raise it and fire exponentially faster than it takes a law enforcement officer to visually

recognize and process what is occurring," Visners stressed.

Moreover, Visners declared, the precise positioning of the rifle was not as problematic as the prosecution alleged, considering the "countless unorthodox fashions" in which "any firearm, including a rifle, can be discharged."

- Why didn't the other officers shoot? Visners suggested that the brief time span of the shooting was the critical factor.

The other officers said afterward that they "could have" or "should have" shot but the gunfire was over before they mentally processed what was happening. Visners verified for the Court how fast rounds can be fired from a semi-automatic pistol and established that after the first round was discharged, two more could have followed within half a second.

"Coupled with the different angles of view and perhaps even different stress levels, the short duration could easily explain why the deputy was the only one who shot," he said.

- And the earbud issue, which had been used in an effort to challenge the officers' credibility?

Evidence independent of Visners' testimony established that the suspect had been wearing earbuds, as the "incriminating" photograph showed. But they were removed and put into his pocket at the scene by fire/rescue personnel, not by LEOs trying to "cover up" the true circumstances. The officers wouldn't have seen them before or immediately after the shooting, Visners testified, because their attention was sharply

focused on the suspect's weapon, not on his ears.

"No other witnesses who saw the suspect before the shooting noticed the earbuds either," Visners told FSN. "Just like the involved officers, they were concentrating on the rifle in his grasp."

In addition, Visners pointed out to the Court, "It is not a requirement for law enforcement to assess the hearing capabilities of an individual prior to the deployment of deadly force."

He also explained why deploying a CEW would not have been an appropriate option to a seemingly lethal threat under the circumstances.

EXONERATION. Five weeks after the hearing, on July 27, Judge Usan issued his ruling in a detailed 36-page decision. Visners' testimony was cited among factors that had influenced his conclusion: the deputy's shooting was reasonable under the law and within the realities of human performance. The manslaughter charge was officially dismissed.

The suspect's death was "tragic," the judge said. But to allow the national debate over police shootings, with its "conflicting agendas," to "invade this legal process" would be a great injustice.

Immediately after the ruling, prosecutors said they intend to appeal and the attorney for the dead man's survivors said he plans to "push forward" with a federal civil rights lawsuit.

Visners, meanwhile, is studying for a master's degree in forensic behavioral analysis at Florida Gulf Coast University to further enhance his UOF expertise. He hopes also to obtain a therapist's license that will allow him counsel officers who have survived shooting encounters.

Sean Visners can be reached at SVisners@sunrisefl.gov.

II. From our in-box: More on CEW darts & infections

Our report in FSN #318 [8/22/16], regarding a study of whether unsterile CEW darts cause infections in targeted subjects, brought this response from a medical professional:

There is another factor in the low rate of infections from CEW darts. When penetrated by a smooth-surfaced object, the skin acts like a squeegee, and stops much of the foreign matter that was on board the dart at the surface.

In the medical environment, this is commonly seen with accidental needle sticks. Even where the blood that was already on the needle is known to be infected with a blood-borne pathogen, the incidence of contraction of diseases is low, under 10%. The shallow depth and low contact time are also factors in reducing the pathogen load delivered to the wound.

The incidence of infection can be further reduced by treatment of the wound by flushing and cleaning soon after the incident, and treatment of the person with prophylactic medications.

LEOs who want to be proactive in continuing to keep the incidence of CEW

dart-wound infections at a negligible to non-existent level can go the extra mile by cleaning their dart probes with alcohol prep pads before the start of every shift. Denatured ethyl and isopropyl alcohols are routinely used to clean electrical contacts on many types of equipment, and clean contacts transmit more energy and more efficiently than dirty ones. So there may be a slight performance increase if the darts are clean.

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