



# FORCE SCIENCE<sup>®</sup> NEWS

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## Appeals court issues guidelines for uof in non-criminal emergencies

### I. Appeals court issues guidelines for UOF in non-criminal emergencies

Facing a medical emergency and a use-of-force dilemma, did this sheriff's deputy do the right thing?

The deputy, working road patrol for the Oakland County (MI) SO, responded one June afternoon to a call at a residence near Detroit where four paramedics were struggling to help a man overcome a life-threatening diabetic crisis.

According to later documents in the case, a finger prick had established that his blood-sugar level was "extremely low at 38," the normal range being 60-110. Left untreated, the "medical emergency" could "lead to prolonged seizure and death."

But when the deputy arrived, the man was on a bed, "combative and confused," vigorously fighting the paramedics' efforts to insert an IV catheter into his arm so they could administer dextrose to stabilize his condition.



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When they finally did get the catheter in, with all four of them trying to hold him down, the “completely disoriented” subject “swung a fist” toward one medic and “ripped the catheter from his arm, causing blood to spray from the open vein.” They managed to stop the bleeding, but the man “continued to kick, swing, and swear at the paramedics” as they tried in vain to control him.

The deputy had encountered more than a dozen diabetic emergencies in his career and knew the pattern. When verbal directions to “relax” didn’t settle the man, the deputy went to his CEW. He did not know “everything that [might be] going on medically,” he later explained, and figured his CEW was a “better option than ‘hands-on stuff’” to “minimize damage.”

After a warning was ignored, he “then deployed his Taser in drive-stun mode directly to [the subject’s] right thigh...for a few seconds.” The thrashing man “calmed down long enough” for a paramedic to reestablish the IV. As the dextrose kicked in, one of the medics noted, the patient “became an angel” and was “very apologetic.”

At the hospital, his blood-sugar level measured within the normal range.

There was general acknowledgement that the Tasing likely “enabled the paramedics to save [the man’s] life.”

Enter the inevitable lawsuit....

**IMMUNITY ISSUE.** Some seven months after the incident, the man filed a complaint in US District Court, alleging that the deputy had violated his constitutional rights by using excessive force against him and,

additionally, was guilty under state law of assault and battery. The deputy’s actions, he claimed, had inflicted burns on his right thigh and caused his diabetes to worsen.

The deputy asked for a summary judgment dismissing the suit on grounds of qualified immunity, but the district judge ruled against him.

The deputy’s use of the CEW in those circumstances was “objectively unreasonable,” the judge concluded, under the guidelines for evaluating justifiable force established by the US Supreme Court in *Graham v. Connor*. The man in medical distress had committed no crime, was not resisting arrest, and posed no direct threat. “[A]ny danger could have been eliminated by simply stepping away” from the violent individual, the judge stated.

Therefore, he decreed, the case should proceed to trial.

**APPELLATE VIEW.** Reviewing matters on the deputy’s appeal, however, a three-judge panel of the US Court of Appeals for the 6th circuit saw things quite differently. In a decision rendered last month [Apr., 2017], the panel ruled that the deputy “did not use excessive force” when he deployed his CEW.

Granted, he was not facing violent resistance by a criminal, the panel said, but the district judge in narrowly applying *Graham* factors to law enforcement in a medical emergency failed to see “the overall standard of objective reasonableness.”

To have “stepped away” from the situation “would have had potentially fatal consequences,” so “some degree of force...was reasonably necessary to protect the paramedics and, more importantly, to save [the man’s] life,” the panel explained. In short, he “needed to be subdued” in order to receive life-saving assistance.

“Four paramedics were unable to physically restrain [the man], whose health was rapidly deteriorating and who was unresponsive to [the deputy’s] command to ‘relax.’” The paramedics were “put in immediate physical danger by [the patient’s] combative actions” and everyone present, including the deputy, “were at risk due to the blood spraying from [the man’s] arm.” Plus, the subject’s “mental and physical state” rendered him “a threat to his own safety.”

Under the circumstances, the panel ruled, “We conclude that a reasonable officer on the scene, without ‘the 20/20 vision of hindsight,’ would be justified in taking the same actions” as the deputy had.

The justices noted that “no appellate court has previously provided any guidance on how to assess objective reasonableness in the...atypical situation of a medical emergency.” So they offered a three-question test to guide courts in assessing such cases in the future:

“1. Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?

“2. Was some degree of force reasonably necessary to ameliorate the immediate threat?

“3. Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

“If the answers to the first two questions are ‘yes,’ and the answer to the third question is ‘no,’ then the [involved] officer is entitled to qualified immunity.”

The panel cautioned that it was not holding that a law enforcement officer is “always justified in using a Taser to gain control over a person suffering from a medical emergency.”

But in the case of the Michigan deputy, the judges declared that he did act in an objectively reasonable manner under those circumstances. Thus they reversed the judgment of the District Court and sent the case back there “with instructions to dismiss the complaint.”

By then, the man who originally brought the suit had died from complications from his diabetes.

The appellate decision in this case, *Estate of Corey Hill v. Christopher Miracle*, can be read in full, free of charge, by clicking [here](#). The overturned District Court decision is available by clicking [here](#).

Our thanks to Michael Brave, CEW Legal Director for Axon Enterprise (formerly, TASER International, Inc.), for alerting us to this case.

## II. Mark your calendar: Special UOF conference features all-star cast

A special use-of-force conference, featuring top researchers whose studies we follow regularly on Force Science News, is scheduled for June 26-27, sponsored by the Miami-Dade (FL) PD.

A dozen distinguished presenters—“some of the nation’s most renowned and highly regarded subject-matter experts”—are lined up for “Police Use of Force in Today’s World,” planned at an oceanside resort hotel in Sunny Isles Beach, FL, located between Ft. Lauderdale and Miami.

According to the sponsor, presenters will include: Dr. Darrell Ross, whose latest study on arrest-related deaths will be reported in our next edition; Dr. Mark Kroll and Dr. Jeff Ho, leading authorities and expert witnesses on CEWs; Dr. Deborah Mash, a foremost researcher of excited delirium syndrome; Dr. John Peters of the Institute for the Prevention of In-Custody Deaths; Atty. Michael Brave, well-known for his incisive legal updates on force issues at law enforcement training conferences; and half a dozen others.

Topics will include:

- How high-profile cases are impacting policies, practices, and force decisions—now and in the future
- The realities of CEW-related fatalities
- What “fluctuating” force standards mean for administrators, trainers, and officers
- Understanding so-called “best” practices

- Structuring policy, procedures, and guidelines to avoid “trip wires”

- How to install positive habits and optimally manage officers’ uses of force

- Squaring the public’s 1st Amendment rights and officer safety

- Recognizing calculated efforts to bait officers into using force

- Much more in the way of “science-based, forward-looking knowledge, solutions, and resources for participants’ urgent concerns.”

The use-of-force conference is geared towards a wide audience ranging from law enforcement , corrections, attorneys, physicians, and academics. Force Science News will be in attendance to report on highlights.

For more information, email Lt. Alvaro Ortiz at: aortiz@mdpd.com or call: (305) 715-5000.

Click here to download a full conference brochure.

## III. Acclaimed film on OIS survivors now available on DVD

A powerful documentary in which officers candidly describe their personal agonies and ecstasies of surviving a shooting is now available for personal use and public presentations in DVD format.

In previous issues of Force Science News, we’ve enthusiastically endorsed the 96-minute film, Officer Involved, an exceptional and professional labor of love by Georgia police officer Patrick Shaver and his

wife Carla (see FSN #276 of 2/24/15 and #315 of 7/12/16).

Across some four years, the couple traveled more than 24,000 miles at their own expense, filming interviews with over 70 OIS survivors and deadly force experts for unvarnished insights into what it means and what it takes to confront death itself and the often unpredictable aftermath—and win.

Among the human behavior authorities appearing on camera are Dr. Bill Lewinski and Dr. Alexis Artwohl of the Force Science Institute. The feature is offered with closed captioning for the hearing impaired and with Spanish subtitles.

In addition to the documentary itself, the DVD includes a 30-minute short on the “Making of Officer Involved.” The Shavers expect the films to be available on iTunes and Google Play by summer.

A fuller description and ordering information for personal-use copies can be found by clicking [here](#) or visiting: [www.OfficerInvolvedProject.com/order/dvd](http://www.OfficerInvolvedProject.com/order/dvd)

For use in academy training or for public presentation, an easy-to-fulfill temporary licensing arrangement must be made to comply with US copyright laws. For more information, including pricing and ordering for those purposes, click [here](#) or go to: [www.OfficerInvolvedProject.com/order/group](http://www.OfficerInvolvedProject.com/order/group).

\*\*\*Use the code FORCESCIENCE and you'll receive a 20% group-order discount during the next two weeks.

For officers who have not been in a shooting, “the film can serve as preparation for how

the experience may affect you and what you can do to best assure a positive outcome,” Patrick Shaver says. “Those who’ve already been there will find comfort in knowing that other officers have shared reactions that they may have felt were unique to them.”

Clearly the public can learn much from his intimate interviews.

During a presentation at the recent annual conference of the International Law Enforcement Educators and Trainers Assn. in St. Louis, Shaver showed some ancillary footage he shot of conversations with civilians.

Without identifying himself as a police officer, he asked a random sampling their thoughts on OISs. Some expressed confidence in the police and showed empathy for what officers endure after using deadly force. But a disturbing number offered observations along these lines:

“Most often it’s the officer’s fault. They use their guns to get what they want.”

“There has never been a police officer convicted [of a wrongful shooting]—ever!”

“It’s police militarization.”

“Shooting shouldn’t even be an option.”

Shaver says that a percentage of all sales from Officer Involved will be donated to various law enforcement charities.

#### **IV. Quote-worthy: On mind-set**

“Approach each day as if you have something new to learn.”

—Missouri Gov. Eric Greitens  
Author, *Resilience: Hard-Won Wisdom for Living a Better Life*

(Quoted by Force Science Analyst Brian Willis in welcoming remarks kicking off the 2017 ILEETA Training Conference.)

Written by Force Science Institute  
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