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## Anatomy of an officer's defense in a high-profile shooting Part 2 of a 2-part report

EDITOR'S NOTE: Last September in a volatile case that drew international attention, Betty Shelby, a white police officer in Tulsa, OK, was charged with first-degree manslaughter for fatally shooting an uncooperative black man she thought was reaching into his SUV for a gun to use against her. No weapon was found, and Shelby was accused by the county DA of having "unlawfully and unnecessarily" over-reacted while emotionally "overwhelmed by fear." Police Atty. Scott Wood, a Force Science graduate and faculty member, engineered her defense in a trial conducted last May, as Shelby faced the possibility of life in prison.



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The day after Betty Shelby gave her official account of the shooting to Tulsa PD, Atty. Scott Wood found a voice-mail message on his office phone, left by an anonymous caller.

The day before the fateful encounter with Shelby, the voice said, the dead man had been “shooting up the street” in another Tulsa neighborhood. “Check it out,” the caller advised. Wood’s investigator Mike Huff, a retired homicide detective, did.

Frightened witnesses reluctantly admitted that a black male fitting the suspect’s description—apparently very intoxicated or drugged up—had fired randomly in the air on their block and had dropped his gun as he ran off.

To Wood’s mind, this suggested an answer to a provocative question being hammered in protest of the shooting. No weapon was found inside the man’s SUV after Shelby shot him, so why would he reach into the vehicle to grab a gun, as Shelby claimed?

Wood figured the suspect, high on hallucinogens, did intend to grab his gun; he forgot in his addled state that he’d lost it the day before.

The investigator unearthed more. Some media reports had painted the deceased as a docile “church-going choir member.” In fact, Wood says, “warrants were out for him for failure to appear. He’d been a certified gang member for 20 years. He’d been shot before, stabbed before, blinded in one eye in a gang fight. He’d served time for selling crack and resisting arrest. On parole, he flunked 15 drug tests but was never revoked. His parole officer had complained in writing

that he was a danger to himself and society, but nothing was done.”

Much of the suspect’s background would be excluded from court as irrelevant and prejudicial. But Wood says the discoveries motivated him to fight back hard against what he considered a blatantly distorted activist narrative.

“I decided we were going to be very vocal in our defense,” he says. “The gloves had to come off. I just was not going to let the protesters and the media run amok saying Betty shot some innocent guy with his hands up.”

**PUSHING BACK.** As co-counsel, Wood recruited Shannon McMurray, a Tulsa criminal defense attorney with “a reputation for being extremely aggressive and zealous in representing clients.” She enthusiastically embraced the strategy of high-visibility pushback.

One Saturday Wood locked himself in his office and “completely filled a whiteboard with factual information I wanted to bring out.” In one three-day period, he gave interviews to nearly 30 local and national tv and print outlets. And he put together a PowerPoint presentation on the case that the local FOP posted on social media.

“You couldn’t go anywhere in Tulsa and not hear people talking about the shooting,” he says. “Looking ahead to a jury, we needed to be part of that.”

In a particularly dicey move, Wood and McMurray agreed to let Shelby be interviewed on 60 Minutes, known for its take-no-prisoners exposes. The crew took a full day to film the segment. Wood chuckles

at the memory of McMurray pulling a producer aside and telling him, “If you screw us on this, I’ll personally come to New York and make your life holy [expletive] hell.”

When the piece aired, it included footage of the suspect’s twin sister bitterly condemning Shelby for shooting, and host Bill Whittaker’s tone and language at times conveyed skepticism about the officer’s perceptions.

But Shelby had generous airtime in which she gave a detailed account of the confrontation from her perspective. “She showed her composure and stability and offered a rational justification for her actions, which is what we wanted,” Wood says.

**TRIAL RUNS.** While working to maintain visibility in the court of public opinion, behind the scenes the two attorneys prepared for the court of law, where Shelby’s freedom would be at stake.

In analyzing the circumstances of the shooting and crafting points they needed to address at trial, two key consultants they conferred with closely were Dr. Bill Lewinski of the Force Science Institute and another seasoned use-of-force expert, Jim Clark, former legal section chair for the National Tactical Officers Assn.

The consensus ultimately evolved that four critical issues must be dealt with persuasively to sway a jury in the defense’s favor:

- Did the suspect actually try to reach inside his SUV or, as the protest narrative insisted, was the driver’s window fully raised, making a thrust inside impossible?

- Why did Shelby shoot before the suspect actually produced a weapon and clearly posed a life-threatening danger?

- Why didn’t she use less-lethal force to control him instead of killing him?

- Was she in control of her emotions at the time she pulled the trigger or, as the district attorney alleged, was she in an out-of-control “melt down” from unreasonable and unnecessary panic and fear?

As part of honing their case, Wood and McMurray conducted mock trials with two focus groups. “We presented both sides, anticipating what the DA’s main case would be and arguing ours,” Wood explains. “We learned a lot.”

Perhaps the most memorable—and challenging—lesson, he says, was “how hard it is to get civilians who have never really been scared of dying to get inside an officer’s head in a deadly force encounter.”

He asked one mock juror if she had ever been in a situation that she considered comparable. Oh yes, she said: one time she’d been outdoors and noticed that off in the distance a coyote was looking in her direction.

**STATE’S CASE.** When the real trial got underway early in May, in the courthouse where Shelby had worked as a deputy when she was with the sheriff’s office, eight women and four men occupied the jury box. One of the men and two of the women were black.

During jury selection, the DA had told prospects that the case had “a great deal to do with racial bias.” But this theme failed to

be developed with hard evidence when the state called its witnesses. (In her 60 Minutes interview, Shelby had emphatically denied any racial animus, and people who knew her were familiar with her cordial professional and social relationships with blacks, Wood says.)

The state's case focused principally on Shelby's emotional status surrounding the shooting of a subject who wasn't advancing, wasn't making threats, and wasn't holding any weapon. Called as state witnesses, officers who'd been at the scene conceded that she'd shown some emotion after the shooting, when she exclaimed repeatedly, "I can't believe he made me do it!" But no one offered any recollection that suggested that overwhelming and unreasonable fear had driven her deadly force decision.

Of course, the recording of her tearful and anguished collapse during her formal interview was shown. Sgt. Dave Walker, the homicide detective and Force Science Analyst who'd taken her statement, agreed she was emotional then, "reliving the event." But, he testified on McMurray's cross-examination, her behavior was not abnormal in his experience of investigating some 20-30 OISs—"everyone handles stress and grief differently"—and did not necessarily reflect her behavior the evening of the shooting.

More unusual and emotional, he stated, was the DA's behavior—bringing charges before Walker completed his investigation and before autopsy and toxicology results were known. If the decision had been his to make, Walker insisted, he would not have charged Shelby with any crime.

DEFENSE CASE. The core of the case on Shelby's behalf consisted of testimony from

a series of subject-matter experts, hand-picked to address the essential questions Wood and McMurray had identified in their planning stage. Wood, who handled their testimony at trial, recalls the key messages he intended for each to get across to the jury.

- Parris Ward, a forensics animator, video expert, and fellow faculty member with Wood for the Force Science seminar on body cameras. After explaining the many limitations of law enforcement recording equipment, Ward showed an "enhanced and stabilized" version of the video of Shelby's shooting filmed by the camera on board the police helicopter that had hovered over the scene.

While distance and poor quality of the raw footage had initially left uncertain whether the suspect had actually reached through the window of his SUV, the enlarged and technologically improved version "was so clear you could see that the window was about 60 per cent down and he did reach into the car," Wood says. "If a gun had been in the door pocket, he could have grabbed it. This was the 'money shot' of the case."

- Dr. David Klinger, former officer and shooting survivor, CJ professor, and author of the book, *Into the Kill Zone*, a benchmark study of OISs. "A very powerful part of his testimony was his explanation of research regarding action versus reaction," Wood says.

"Action always beats reaction. If Betty had waited to see what was in the suspect's hand when it came out of the window, it could have cost her life. Klinger explained that in the time it would have taken her to see a gun and decide to shoot, the suspect could have gotten off two to four shots at her.

“Klinger explained that she had to anticipate a threat based on the suspect’s behavior and try to preempt it. This suspect was ignoring her commands even when she had a gun drawn on him, a strong indicator that serious trouble could be coming.”

- Dr. Howard Williams, a 36-year veteran of law enforcement and author of a definitive book on TASER research [see Force Science News #99].

To counter claims that Shelby should have used less-lethal force, Williams testified about cases he has investigated in which CEWs have failed and officers who chose to use them instead of a gun were slain as a result. Overall, he estimated the failure rate for TASERS at 10-15%.

Wood says: “He told the jury that if you really believe the suspect has a gun, you’re not going to bet your life on trying to Tase him. He said an officer in Betty’s position would be ‘ill advised’ to rely on less-lethal options. If he personally were in her position, he would not do it.”

- Dr. Kris Mohandie, forensic police psychologist, authority on OISs, and well-known tv consultant in high-profile cases of violence. “He said that cops train for being involved in a deadly force encounter but it’s the last thing they want to experience,” Wood says. “When it happens it puts them in a state of ‘cognitive dissonance’ for a period afterwards.”

When he analyzed video from the shooting scene, Mohandie said, Shelby’s commands and physical movements seemed deliberate and methodical and did not match someone out of control from anger or fear. Later,

during her departmental interview, she did become emotional about having killed someone. But that, in his opinion, “had nothing to do with her state of mind” at the time she shot the suspect.

“He also countered suggestions by the prosecution that Betty had been given ‘special treatment’ because her interview was delayed until she ‘had time to get her story straight’ and she was allowed to view evidence videos before giving a statement. Dr. Mohandie said this is standard police procedure these days.” In fact, Wood says, Tulsa PD has honored both practices in policy for years, with full knowledge and approval of the DA’s office.

To cement the picture of Betty Shelby as a calm, competent officer, Wood and McMurray had the accused officer herself take the stand. During more than two hours of direct testimony and cross-examination, delivered quietly but firmly and with strong eye contact with the jurors, she recounted her training and the danger cues that led to her decision to employ deadly force.

She testified repeatedly that her training stressed that in a potentially dangerous situation, hesitation could prove deadly.

On cross, in response to a question about whose fault the shooting was, she placed the blame squarely where it belonged: If the suspect “would have only communicated with me and complied with what I asked,” she said, “none of this would have happened.”

VERDICT & BEYOND. After a seven-day trial, the jurors deliberated for more than nine hours before agreeing on a verdict. “In the minutes before the judge read it, I was

someplace else I had never been before,” Wood says. “I was afraid I would not be able to live with myself if they convicted her.”

Then Betty Shelby and her defense team heard the decision: “Not guilty.”

Almost instantly, anger galvanized the suspect’s family and protesters, who claimed Shelby “got away with murder.” Demonstrators outside the courtroom chanted, “No justice, no peace, no racist police” and yelled, “Bring her out,” referring to Shelby.

“Under a safety plan,” Wood says, “we immediately left the courtroom and got out of the building through a circuitous route to cars that were waiting.” It was days, he says, before the officer and her attorneys felt free to return to their normal routines, and then only with utmost caution.

At this writing, Shelby is back at the PD, “mulling over what she’s going to do long-term,” Wood says. For now, she’s assigned to inside work. An IA investigation is pending, and she has been named in a civil suit brought by the suspect’s estate. In a post-trial statement, the NAACP called the verdict “disappointing,” and said it is hopeful the Justice Dept. will file federal civil rights charges against Shelby.

In announcing the acquittal, CNN reported as fact that Ofcr. Betty Shelby, “who is white,” had killed a black man “who had his hands above his head.”

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