



# FORCE SCIENCE® NEWS

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## I police attorney's new advisories on post-shooting statements, BWCs

Training note: If you're interested in bringing the popular two-day **Force Science Basics** course **directly to your agency**, please e-mail us at: [training@forcescience.org](mailto:training@forcescience.org) or call Scott Buhrmaster at: **(312) 690-6213** for details on pricing, course content and scheduling throughout 2018.

### I. 1 police attorney's new advisories on post-shooting statements, BWCs

A prominent police defense attorney is revising the post-shooting advice he gives officers in light of a surprising jury instruction that was issued in the criminal trial of one of his clients.

Scott Wood, a certified Force Science Analyst and a Force Science instructor, was in the international spotlight last year when he defended Oklahoma officer Betty Shelby against a first-degree felony manslaughter charge for fatally shooting an unarmed black man she thought was reaching for a gun during a contact over an abandoned car. [For full details of the case, see *Force Science News* editions #342-343 in the *FS News* archives found [here](#).]

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With Wood as her attorney, Shelby followed the protocol he routinely recommended for officer-involved shootings at the time and did not give a formal statement to investigators about the encounter until she was well-rested two days later.

At the end of her seven-day trial last May, at which point a guilty verdict could have sent her to prison for life, the judge issued an unexpected jury instruction that called attention to this delay.

“Evidence has been introduced,” he stated, “that the Defendant did not make a formal statement to police on [the date of the shooting].” He termed this “impeachment evidence” that is “offered to show that the Defendant’s testimony is not believable or truthful.”

The jurors “may not consider this impeachment evidence as proof of innocence or guilt,” he cautioned, but they could consider it a factor in “determining what weight and credit to give the credibility of the Defendant.” In other words, it could affect her “believability.”

Fortunately, Wood says, the jurors ultimately did not hold Shelby’s delay in meeting with investigators against her. After nine hours’ deliberation, they returned a verdict of not guilty.

Still, Wood believes that officers and their attorneys should be aware of the problematic instruction—and what, in his opinion, to do about it.

Wood believes that “this instruction was given because Shelby never invoked her constitutional right to remain silent” pending the giving of her official statement.

In 2013, he explains, the US Supreme Court in a closely divided decision held that in a police investigation a subject must *specifically invoke* his or her constitutional privilege to remain silent. Otherwise the subject’s silence may be used against him/her later in court. [see *Salinas v. Texas*: [click here](https://www.supremecourt.gov/opinions/12pdf/12-246_7148.pdf) [https://www.supremecourt.gov/opinions/12pdf/12-246\\_7148.pdf](https://www.supremecourt.gov/opinions/12pdf/12-246_7148.pdf) to read it.]

While that case involved a civilian murder defendant, not an officer involved in a shooting, Wood argues that the core issue “is closely akin to the one raised” in the Shelby instruction. (At Salinas’ trial, the court gave a jury instruction similar to the one issued in Shelby’s case.)

Consequently, in an effort to forestall that kind of instruction, Wood has added this provision to his post-shooting advisory, which is now newly printed on the back of his business card:

**“IF YOU ARE INVOLVED IN A SHOOTING:**

“After providing a brief public safety statement at the scene, announce to the investigator that you are invoking your constitutional right to remain silent. Say the words, ‘I am invoking my constitutional right to remain silent under *Salinas v Texas* and the US Constitution.’ Then remain silent about the details of the shooting until you are physically and emotionally ready to give a statement to investigators and your lawyer determines you are ready.

“Retain and consult with an attorney who specializes in police use-of-force matters as soon as possible, from the scene if feasible. Then follow your lawyer’s advice.”

Wood told *Force Science News*, “In most cases, a recovery period before giving a formal statement is important. It works to an officer’s benefit, in terms of helping him consolidate memory, decompress emotionally and physically, and provide the most accurate and comprehensive account possible of what happened. But this much-needed rest period should not result in an officer’s credibility being subjected to doubt in a criminal proceeding.

“Everyone has a right to remain silent, even if the silence is only temporary. But not everyone understands that that right must be asserted to be protective. The Supreme Court has made clear: It’s not automatic.”

## **BODY-WORN CAMERA CONCERNS**

During our recent conversation about jury instructions in criminal cases, Wood also mentioned problems that are arising in some civil cases, concerning body-worn cameras.

“Plaintiffs’ attorneys are asking to inspect recordings from *all* BWCs that were present at an OIS or other critical incident in which injuries occurred, whether the cameras were reported to be turned on or not,” he says, “and they want to know how the content was downloaded, stored, etc. A camera protocol that’s not as it should be can cause trouble later in court.”

His recommendations in that regard:

- “If you are wearing a body cam that was activated during the event, do not stop recording until the scene is static (all suspects in custody or no longer posing a threat) or you receive permission from an on-scene supervisor to turn it off.”

- “All cameras present, whether they are believed to have recorded anything or not, should be collected as evidence, just as other pieces of evidence at the scene will be.”

- “The downloading of the recording should be witnessed by an investigator working on the case, including when an outside agency is handling the investigation. Do not assign an IT officer or other party to access the recording alone or unsupervised.”

- “Of course, the officer(s) involved in the incident should not attempt to access the recording or be involved in processing camera evidence at all.”

Wood notes: “Law enforcement is still undergoing a significant learning curve regarding body cameras. We undoubtedly will be learning a lot more about them and how they impact post-shooting developments over the next few years. Those in charge of risk management for departments using BWCs need to become familiar with the legal sanctions for mishandling this evidence.”

*Atty. Wood, of the law firm Wood, Puhl & Wood in Tulsa, OK, can be reached at: [okcoplaw@aol.com](mailto:okcoplaw@aol.com)*

## **II. “Radical paradigm shift” needed at active shooter scenes**

With active shooter issues grabbing headlines currently, don’t miss the 18-minute presentation on Tactical Medical Care at crisis scenes by Advanced Force Science Specialist Chris Butler newly posted on YouTube.

Butler, a Force Science senior instructor and an inspector with the Calgary Police Service

in Canada, calls for a “radical paradigm shift” in both law enforcement and the civilian population, aimed at preventing the injured at active-shooter scenes from dying of treatable wounds because of a lack of on-site medical attention.

For public safety personnel, he describes tactics that will help first responders to more quickly get hemorrhaging stopped before it becomes fatal. For civilians caught within an active-shooter site, he calls for a mental shift from regarding oneself as a powerless victim to acting as an “immediate responder” to aid the wounded prior to the arrival of professionals.

The goal, he says, is to keep “even a single person with potentially survivable wounds from dying” before they can reach a trauma care facility, as some tragically have at past active-shooter locations. He mentions a number of resources for more information on achieving this time-pressured aspiration.

Butler’s presentation was originally given at the latest WINX Event in Appleton, WI. It can be accessed on YouTube by [CLICKING HERE](#) or visiting [youtu.be/5NH5uhwSXXo](https://youtu.be/5NH5uhwSXXo)

*Our thanks to Roy Bethge, co-founder of the Virtus Group, Inc., for tipping us to this posting.*

### **III. Mark your calendar: Behind police training’s “most-watched” video**

**What:** International premiere of the new documentary film, *Dinkheller*

**When:** Mar. 21, 7-9 pm

**Where:** The ILEETA (International Law Enforcement Educators & Trainers Assn.)

annual training conference and expo, St. Louis

The three-and-a-half minutes of dash-cam footage of the murder of Dpty. Kyle Dinkheller at the edge of a lonely road in rural Georgia is arguably the most-seen police training video ever.

Survival instructors have shown the gut-wrenching recording across two decades to warn officers about the dangers of “deadly hesitation,” and a YouTube posting with more than 1.2 million views has exposed it to civilians around the world as well.

Now a new documentary film by Patrick Shaver, the active LEO who produced and directed the acclaimed documentary *Officer Involved*, reveals in vivid and at times emotional detail the back story of this infamous event: who Kyle Dinkheller truly was and what actually led to his name taking its somber place on the police memorial wall.

Titled simply *Dinkheller*, the feature-length production does include a re-enactment of the incident, but the tactics of the fatal traffic stop are not its core focus. “Those lessons have been learned,” Shaver told *Force Science News*. Instead, the film reveals other important information for trainers and officers alike—and for the memory of the slain deputy—as it dispels some widespread, persistent misconceptions about the events that led up to this tragic shooting.

“I want the world to have more to remember Kyle by than one bad day,” Shaver says.

**UNCOVERING MYTH.** Working largely alone for nearly a year, Shaver interviewed Dinkheller’s father, daughter, fellow

deputies, sheriff, and others who knew him well, in and out of uniform. In doing so, the filmmaker uncovered evidence that one of the strong beliefs about the shooting that trainers often include in their instruction is myth—it never happened.

When some trainers present the deputy's dash cam video, Shaver says, they indicate that he had gotten in trouble previously for drawing his gun on somebody...or that he had pulled his gun one too many times in his career...or that he had used force before and had been warned, "If you do this again, you're going to lose your job."

Whatever the specific variation, Shaver discovered, that narrative is false.

"It doesn't reflect what actually led up to the encounter," Shaver said. "What *Dinkheller* corrects is the misconception that Kyle was some kind of trouble maker in the lead up to his last moments. We're going to help trainers more accurately tell the story of who Kyle Dinkheller was as a deputy and as a person."

**ILEETA PREMIERE.** It's fitting, Shaver believes, that the film first be unveiled on a large scale to law enforcement at the upcoming ILEETA conference.

"I showed my first film, *Officer Involved*, which deals with officer shootings and their aftermath, at ILEETA because that's where hundreds of instructors come together to talk about new topics in policing. Many of the trainers there are already using the dash cam video, and what they see in the new documentary may change some of what they teach."

The only previous public screening was last January in Laurens County, GA, where

Dinkheller worked and died. It was shown there 20 years to the day after the killing, and the fact that about 300 people attended "shows how much interest there is in Dinkheller's story," Shaver says. "I've never had so many people stay after a film screening to share their impressions from my work."

Although the movie is about a law enforcement officer, it's not just a law enforcement movie, Shaver says, nor is it intended exclusively for a law enforcement audience.

In addition to scheduling screenings at police departments and police associations, Shaver aims also to present *Dinkheller* at colleges and other venues. Already the 90-minute film has been accepted for screening in the prestigious New York City International Film Festival, and Shaver expects that other festivals will follow suit.

Further information, including procedures for arranging a screening, can be obtained by [clicking here](#) or visiting: [www.dinkhellermovie.com/contact](http://www.dinkhellermovie.com/contact)

Shaver can be reached at: [pwshaver@gmail.com](mailto:pwshaver@gmail.com).

#### **IV. "Breath-taking" account: The unique killing of a mass cop killer**

Some 20 months ago as an anti-police protest rally was breaking up, a sniper enraged over white cops killing black suspects took revenge, slaying five officers and wounding nine more in downtown Dallas with a high-powered military rifle. It was the greatest toll of LEOs in a single incident since 9/11.

Now a remarkable piece of narrative journalism by reporter Jamie Thompson of the *Dallas Morning News* recreates this bloodbath and the tactics of an elite team of SWAT operators to track, corner, and uniquely kill the offender—with a robot bearing a disguised C4 bomb, the first such deployment in US law enforcement history.

Thompson's vividly detailed story, "Standoff," based on dozens of hours of interviews, takes you step by step through this tense event from the police perspective. It's a breath-taking read with exceptional visuals, a high drama of blue courage, ingenuity, and professionalism you won't soon forget.

Access it free of charge by [clicking here](#) or visiting: [interactives.dallasnews.com/2018/s\\_tandoff](http://interactives.dallasnews.com/2018/s_tandoff)

*Our thanks to Lt. Glen Mills, president of the Mass. Assn. of Crime Analysts, for helping to facilitate this notice.*

Written by Force Science Institute  
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