

POLICE®

THE LAW ENFORCEMENT MAGAZINE

\$10.00

**2020
BUYER'S
GUIDE**

**SHOOTING
GLOCK'S G48
COMPACT**

**THE BENEFITS OF
LASER SIGHTS**

**ON SCENE AT
NATIONAL
POLICE
WEEK**

**TRAINING FOR ACTIVE
SHOOTER RESPONSE**

★ TACTICS AND TRAINING:

LEGAL GROUNDS FOR USING FORCE

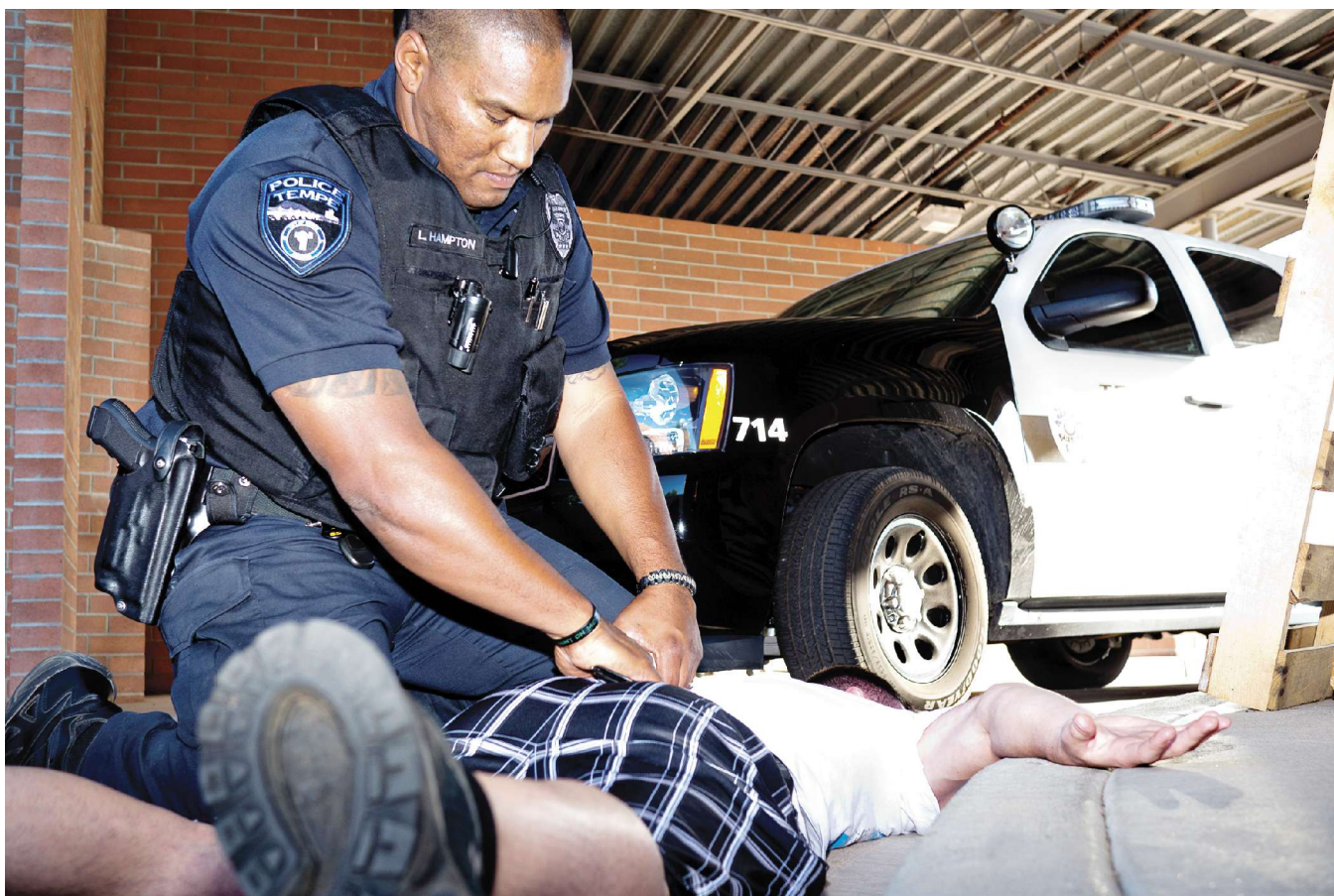


PHOTO: POLICE FILE

Editor's Note: The following article is the second in a series.

Some agencies have policies and training that are not current with the law.

★ GREG MEYER

Why do we do what we do in a use-of-force situation? Why do we grab and twist an arm in one situation, TASER the suspect in another situation, and shoot the suspect in another?

What we do is assess the threat, then apply our knowledge and experience of *policy, training, equipment, and tactics*. These are the Big Four that drive our decision-making when someone decides to resist or fight instead of cooperating when we tell them, "You're under arrest. Turn around and put your hands behind your back."

In this article, we will look at an arrest-related death case that recently went to trial by jury in Arizona and a "suicide by cop" officer-involved shooting that recently went to trial in California.

But first, let's look at the law that tells us how to judge officers' uses of force and *should* drive our policy.

* NARCAN™ KIT

Purpose built, tested and endorsed by and for law enforcement.

The only insulated carry solution, multiple sizes and deployment options (belt and vest).



PERSONAL CARRY, now the standard in Naloxone nasal spray deployment for law enforcement.

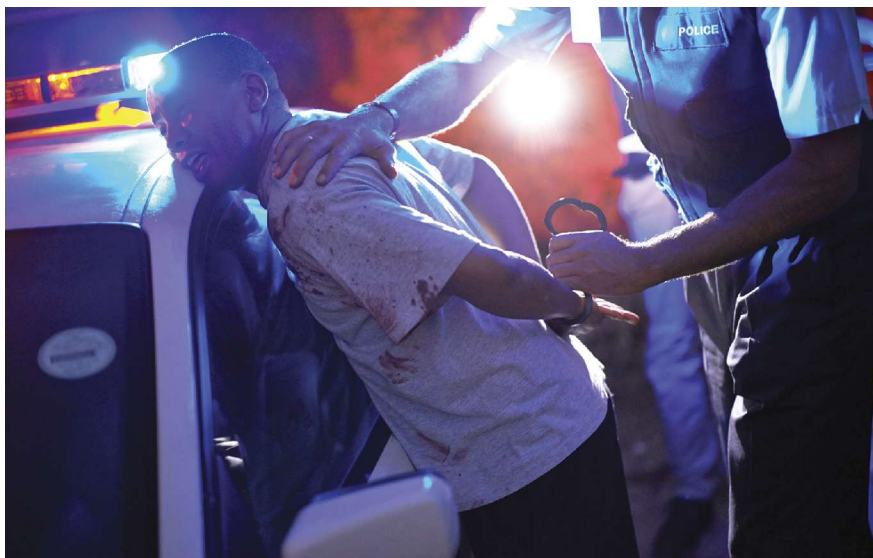
In need of a **TRAINING DEVICE** to instruct opioid overdose rescuers on the proper administration of 4mg Naloxone nasal spray?



For more information and to order, visit www.narcankit.ca

NARCAN® Nasal Spray is not included. NARCAN® is a registered trademark of Adapt Pharma Operations Ltd.

★ TACTICS AND TRAINING



PHOTOS: GETTY IMAGES

OBJECTIVELY REASONABLE

For 30 years, the law has required that police use of force be judged by the United States Supreme Court decision known as *Graham v. Connor* 490 U.S. 386 (1989). *Graham* was a game changer, and it established “objectively reasonable” as the standard for use of force.

Some agencies revised their policies based on *Graham* soon after the decision was published. Others took years, even decades, to catch up. Some are still out of date.

Police tactics experts Joe Callanan (retired lieutenant, Los Angeles County Sheriff’s Department) and Curtis J. (“Jeff”) Cope (retired lieutenant, Huntington Beach Police Department) have written:

“Prior to the establishment of the objectively reasonable standard, most states simply relied on penal codes or other statutory criteria. Common to these earlier standards were the defined terms of ‘reasonable and necessary.’ In modern times, ‘reasonable and necessary’ can still be found in police policy statements, training materials, and a host of ‘after action critique’ protocols. The continued use and acceptance of this outdated terminology serves to mask the current state of the law and confound the ability of the police work force to safely and effectively perform high-risk responses during peak-stress situations that are typically ‘tense, un-

certain, and rapidly evolving.”

It is vital that chiefs know and apply current law as they update their policies.

The Supreme Court ruled in *Graham* that:

- All claims that law enforcement officials have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other “seizure” of a free citizen are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard, rather than under a substantive due process standard.
- The Fourth Amendment “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.
- “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). Its proper application requires careful attention to the facts and circumstances of each particu-

HOLOSUN

DIAL IT IN

NEW FOR 2019



HS403R

- Rotary Dial Brightness Control
- Up to a 100,000 Hour Battery Life
- Parallax Free & Unlimited Eye Relief
- IP67 Certified Waterproof
- 2 MOA DOT



HS503R

- Multi-Function Rotary Dial
- Up to a 100,000 Hour Battery Life*
- Parallax Free & Unlimited Eye Relief
- IP67 Certified Waterproof
- Multi-Reticle System™ (MRS):
65 MOA Circle & 2 MOA Dot;
2 MOA Dot

*Dot Reticle Only

HOLOSUN.COM

TACTICS AND TRAINING

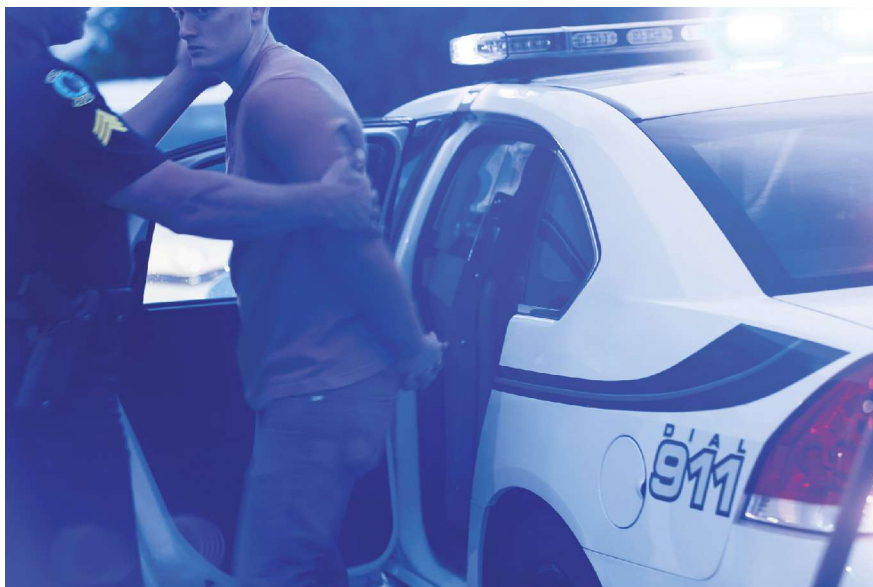


PHOTO: GETTY IMAGES

lar case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

- The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

RASCON V. BROOKINS

Turning to the arrest-related death case that was decided by a jury in *Rascon v. Brookins*, consider the situation that was faced by the four officers who were sued.

Late at night a lone male suspect entered a pharmacy and harassed the staff. They told him to leave, and they locked the door. In the parking lot, the suspect was verbally aggressive with shoppers. Calls were made to 911. The suspect went out into the street and jumped in the back of a pick-up truck. The truck took off, and the suspect fell out. The suspect walked to a residential neighborhood and scared a woman and her child. The suspect ran down a four-lane highway screaming that he had been shot.

Two Phoenix Police Department officers arrived, called for paramedics, and

tried to talk to the suspect, who was now lying down in the traffic lane. When the suspect refused to come out of traffic and was speaking nonsense, the officers grabbed him by his shoulders and pulled him to the sidewalk and tried to keep him calm.

Two more officers arrived. The sweaty suspect rolled away, quickly stood up, and swung his fist at one officer’s head (missing), and the effort to handcuff him began. Officers tried to control him as he kicked and resisted handcuffing. He performed a push-up, got away from the four officers, and a TASER was used in probe mode. But the probes lodged only two inches apart in the upper chest, so there was no incapacitation.

The suspect ran down the street and was tackled by one of the officers. The TASER was activated again, and the trigger was held down for an extended but ineffective cycle. One officer knelt the suspect twice in the rib cage as the suspect continued kicking at the officers. Another held his knee against the side of the suspect’s head.

The suspect was finally handcuffed and attended by paramedics. He died at the hospital. At autopsy it was determined that the subject died as a result of struggle with the police and acute methamphetamine and alcohol intoxication. After days of testimony, the jury quickly found in favor of the officers.

SIMPLIFYING THE DUTY HOLSTER

X-CALIBUR™



MADE IN THE U.S.A.



The X-Calibur works with your body's natural mechanics, incorporating the Science of Human Factors to produce a secure, fast, and intuitive duty holster.

Point Blank
ENTERPRISES, INC.



pointblankenterprises.com

TACTICS AND TRAINING



PHOTO: GETTY IMAGES

BARRON V. CALIFORNIA

The “suicide by cop” case involved a California Highway Patrol motorcycle officer who was sued in *Barron v. State of California*.

It was night and several people called 911 to report a man on Interstate 5 walking on the freeway, waving his arms erratically, jumping over the center divider on the freeway, intentionally trying to be hit by vehicles, and actually being hit by a car. The CHP created a traffic break, and a motorcycle officer moved forward to try to find the man and get him some help. Paramedics had already been called and were staging nearby.

The officer stated the following at his interview, and later testified similarly: “As I came to a stop, I unbuckled my TASER. As I came to a stop, he started to approach my location... I stepped back beside my motorcycle and started giving him commands to stop, stop where he’s at.

“He starts approaching pretty rapidly. He takes his right hand and sticks it behind his back. As he’s approaching me, I went ahead and pulled out my duty weapon and continued to give him commands, ‘Stop—stop—stop.’ And he started yelling at me, ‘I have a gun, and I’m going to shoot you.’ I continued to say, ‘Just stop, just stop.’ ‘I got a gun, I’m going to kill you with it,’ [the man said]... By the time I get my gun all the way out and I’m putting out those commands, he’s probably 30 feet from me now. As he’s yelling, ‘I’ve got a gun, I’m going to kill you.’

“I ducked down behind my bike, he went around the right side of my bike... and he’s continuing to yell, ‘I have a gun, I have a gun, I’m going to kill you.’ At this time, I believed he had a gun... and he had his right hand to the back

to where I couldn’t see his right hand. At that time, he went into the darkness out of my light, and I told him to stop again and he jerked both hands out and points his arms out and locks out his elbows as if he had a firearm. And at that time, I opened fire...”

The suspect died, and the jury returned a verdict in favor of the officer.

THE GRAHAM FACTORS

In both of these cases, in their reports, depositions, and testimony in front of the jury the involved officers explained what happened, what the resistance and attacks looked like, and why they did what they did. If not for their clear, forthright testimony, the verdicts in these cases could have been different.

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- The seriousness of the crime or suspected offense
- The level of threat or resistance presented by the subject
- Whether the subject was posing an imminent threat to officers or a danger to the community
- The potential for injury to citizens, officers or subjects
- The risk or apparent attempt by the subject to escape
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time)
- The time available to an officer to make a decision
- The availability of other resources
- The training and experience of the

- officer
- The proximity or access of weapons to the subject
- Officer vs. subject factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers vs. subjects

- The environmental factors and/or other exigent circumstances

ARTICULATING WHY

When writing your reports, when being interviewed about your incident, and

when testifying about your incident, it would be helpful to apply the elements of the *Graham* factors template to explain *why* you did what you did.


Former police officer and prominent Los Angeles-based police defense attorney Missy O'Linn says, "The ability of officers to recall, articulate, as well as implement what they have learned is as critical to officers as the split-second decision-making that officers face. You only get one chance to tell your side of the story. Being prepared to explain your actions may be even more important than the actions themselves."

In my experience, juries seem to understand the *Graham* language. But in recent years, *Graham*'s objectively reasonable standard has come under attack because some activists assert that it gives police too much latitude for use-of-force decisions. And language about whether the suspect's threat was "imminent" or "immediate" gets lots of attention in court. But let's be clear: you do not have to wait until the suspect is pointing the gun at you and pulling the trigger before you counteract the threat.

In California, at the time of this article, there is pending legislation (Assembly Bill 392) that would greatly tie the hands of officers and even put them in jeopardy of prosecutions (more than they already are) in use-of-force situations. If that California legislation passes and is signed into law, will more states pass similar laws? Will more officers be prosecuted for their use-of-force decisions? Will more juries find in favor of the plaintiff in civil lawsuits? Time will tell the results, but it is certain that your job will be tougher than it already is. ☯

Greg Meyer is a retired Los Angeles Police Department captain, a nationally recognized use-of-force expert, and a member of the POLICE Advisory Board since 1997.

I invite you to email me by June 30 at gregmeyer@earthlink.net with your thoughts about better policy, training, equipment, and tactics that might be incorporated into future articles in this series. Let's team up and share some ideas to benefit all of us in the profession.



AE

Armor Express continues to lead the way in building cutting-edge overt body armor solutions.

Our **TRAVERSE** carrier is now available in our **BRAVO** cut, ensuring superior fit and comfort.

See more at ARMOREXPRESS.COM

ARMOR CRAFTED FOR YOUR MISSION