

Juror Research: Excessive Force Cases
By Thomas P. Baggott, Ph.D.

The Case: A lawsuit was filed by the parents of a mental patient who was shot and killed by police officers who were attempting to serve involuntary commitment papers. The department was charged with wrongful death: excessive use of force. A police SWAT team had responded to a hostage situation and made the determination that negotiations were fruitless, the subject was armed and dangerous, and the hostages were probably going to be killed. The on-scene commander opted to terminate the encounter with deadly force.

Police officers in the jurisdiction were required by law to serve involuntary commitment papers when they are issued, based upon probable cause, by the court. These involuntary commitment papers, under the law, carry the same force as an arrest warrant. They order the police officers to go to a location, take the person named in the papers into custody and bring that person to a mental health facility designated by the court. The papers are written in the form of an order and police departments have little latitude whether or not they are going to serve the papers: it is a duty.

The subject of these involuntary commitment papers was a 30-year-old military veteran named Tony. Tony had been diagnosed as having schizophrenia and bipolar disorder. Tony was mostly stabilized when using his medication; however, when he was off his medications, he became out of touch with reality and had a history of violence. Tony became paranoid and was often convinced that someone was, “going to get me.” Approximately two years previously, there had been an incident with Tony in which papers were served and he attacked the officer with a pitchfork when the officer tried to place him in handcuffs. In that case, the officer backed up, called for help and a three-day siege occurred. In that circumstance, Tony had no hostages and the officers in effect starved him out by cutting off his utilities and water. Tony emerged from the house on the third day, without a weapon, and he was taken into custody after a brief hand-to-hand struggle.

After this first incident, officers came to know Tony and often made a point, when on patrol, to stop by and talk with Tony whenever they saw him outside his residence. Tony was normally friendly and responsive, but was described as being a bit odd. While on medications, he presented no threat.

The latter case began when a police officer saw Tony in his front yard and stopped to visit with him. At that time, Tony was boarding up his windows with nails and two-by-fours and he had strung barbed wire known as tanglefoot in straight line designs approximately six inches above the grass. When the officer inquired into Tony’s intentions, he stated he was getting ready, he knew “they” would be coming after him. The officer notified mental health authorities who, unfortunately, took no action. Days later, Tony’s father

stopped to check on him and found that Tony had destroyed the interior of his house and had barricaded all but one door. Tony's father applied to the court for involuntary commitment papers and they were granted.

The documents were presented to the police station by Tony's father and he was interviewed by officers. Tony's father assured them there were no weapons in the house; Tony was bizarre but not dangerous. Because of the prior history, a supervisor designated four officers to go to Tony's residence and bring him to the mental facility. Upon arrival, two officers entered the dwelling while two waited at the door. Tony appeared from a side room, armed with a sawed-off shotgun and immediately took the first two officers hostage. The second two officers backed out and called for assistance; the siege began. After more than twelve hours, it became apparent that Tony was going to shoot the two hostages. Negotiations were at an absolute impasse. Tony, in his psychotic state, was convinced the officers were working for the government and they intended to kill him because he knew the secrets about the extraterrestrials. On the orders of the on-scene commander, Tony was lured to the doorway by a PA system making unusual noises. Tony was armed at the time and held one of the hostages by the collar. A member of the SWAT team fired one round into Tony's chest and ended the standoff.

An internal affairs investigation, a shooting board investigation and an independent investigation by the Attorney General all indicated the shooting was within policy. The three investigations all covered things that could have been done better, but all concurred the policies were generally followed and the shooting was justified. These three investigations were followed by a coroner's inquest that found the cause of death to be gunfire and the manner of death was justifiable homicide.

The Research Design: The research design for this case was to determine whether or not a jury would find against the department in a civil proceeding. If liability was found on the department, an estimate of damages would be required. Attorneys for the department were particularly interested in how certain officers would be perceived by the jurors. Many of the officers were physically fit SWAT team members and Tony was a somewhat thin 5'10". Surrogate jurors were presented with both sides of the case by way of live presentations by attorneys and videotaped depositions of the officers involved. They were also informed of Tony's past history and provided with news articles about the past history and appropriate psychological and medical charts and records. The research was planned to be presented to three panels of jurors on one day followed by deliberations on the second day.

Case Findings: All three panels of jurors found liability against the police department and assessed millions of dollars in damages. Observations of the deliberation process revealed common factors across all three panels.

Many jurors had “CSI Syndrome”. These jurors, conditioned by television, were of the impression that all things were possible through science. They did not understand why officers differed in their descriptions of events and why there was not scientific fact to support every conclusion.

Many jurors believed extraordinary means should have been used by police officers to arrest Tony without gunfire. Jurors wanted the officers to do everything from throwing a net over him to shooting him with a taser; from shooting him in the leg to hitting him with tranquilizer darts. Several jurors mentioned the officers should have pumped sleeping gas into the house and one juror said they should have used an “electric ax” to quickly chop a hole in the wall and reach in and grab him.

Most importantly, jurors were affected by the use of the officers’ chosen language. The police officers, in hindsight, made very poor choices in their descriptive language. Terms of art in the police department were viewed differently by the public. The most important errant words were “sniper” and “terminating the suspect”. SWAT teams are composed of different officers with different skills. The term of art within the SWAT team for a rifleman is “team sniper”. Jurors perceived a sniper as someone who lies in wait and kills without warning or compassion. When command personnel from the SWAT team talked about “terminating the suspect”, the jurors saw it as callous and robotic. They viewed the SWAT team as cold-hearted killers who enjoyed taking a life.

Research-related adjustments: The weak points disclosed by the defense through the use of pretrial research were modified and three new panels were brought in. The new panels were shown the exact same evidence over the exact same period of time. The differences in presentation were as follows:

1. An instruction was given to the jurors about “CSI Syndrome”. They were asked to please bear in mind that television is fantasy and science in real life is not able to answer all the questions it can in the fantasy world.
2. Non-lethal weapons and their limitations were explained to the jurors. Methods mentioned by the first panels, such as nets and sleeping gas, were explained to the jurors. The impossibility of the use of these devices was clearly understood.
3. The SWAT team rifleman was no longer referred to as a sniper; he was now referred to as the “expert marksman”.
4. The *suspect* was not terminated; the life-threatening situation was terminated.

With these changes, the jurors understood that not everything could be explained by science; extraordinary means usually fail or are too dangerous to try; and an expert

marksman uses his skill to terminate a life-threatening incident. All three juries found in favor of the defense.

Applicable findings:

1. In a case with an exposure in the millions of dollars, prejudice, bias and inappropriate belief systems must be explored. The proper defense must find out what they are up against prior to trial.
2. Jurors, when properly educated, agree with reasonable decisions made by rational minds.
3. Snipers are bad; expert marksmen are good.
4. Don't ever terminate a suspect; terminate the life-threatening situation.

Comments: In movie theaters, when police officers kill a dangerous subject, it is perceived as appropriate. In real life, when an officer takes a life, the citizens demand an explanation of what went wrong. They must be provided with the facts in order to make their own, independent decision.

Terms of art not readily understood by the general public must be explained or, preferably, eliminated during testimony.

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