

## No Such thing As If

*All use of force lawsuits are measured by standards established by the Supreme Court in Graham v. Connor, 490 U.S. 386 (1989). The Supreme Court cautioned courts examining excessive force claims that "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." The Court also stated that the use of force should be measured by what the officer knew at the scene, not by the "20/20 vision of hindsight."*

— From "Law Enforcement and the Law," Policeone.com

The incident began on Sunday, April 7, 2013, about 4:45 in the afternoon. It was an unusually warm day for that time of year in Rehoboth Beach, making it uncomfortable to wear my ballistic vest, but a great day for young men to walk about shirtless, showing off the tattoos they'd acquired during the long gray winter.

What typically happens when the first warm and beautiful weekend arrives is that everyone who can heads to the beach to shake off their winter blues. It's as if someone throws a switch and the town is packed. Suddenly, people are arguing over parking spaces in the first block of Rehoboth Avenue, minivans are unloading families at the Boardwalk, and merchants have a glow that says it's finally time to make some money.

I'm a police sergeant on the city's full-time law enforcement staff, and although I've worked 12 summers, the change always catches me off-guard when it happens.

On that April day, I was near the end of my 60-hour week. Actually, I was working a 66-hour week because I was covering half a shift from the night before: A sergeant had been sick and one of the corporals was out on the Family and Medical Leave Act. That means I finished a 12-hour shift the day before at 7 p.m., went home, took a nap, then returned to work at 1 a.m. By 4:45 p.m. I'd been on for nearly another 16 hours. One of my corporals, Tyler Whitman, had done something similar, working 18

hours straight until I came back at 1; he then rushed home for a quick break before returning to do another 12-hour shift with me. By 4:45, we were both dead tired and ready for the day to end at 7.

I had parked my police cruiser on Wilmington Avenue at the Boardwalk and decided to take a walk. The fresh air would wake me up a bit, plus I would show a police presence. A great way to wind down, I thought, before heading back to the sergeant's office, where I would finish my paperwork. I could see how this long week was finally, *finally*, going to end. I was feeling good, the sky was beautiful, and the shadows off the buildings stretched out, meeting the sun-filled areas to create hard-line contrasts akin to the terrain-like illustrations in old Marvel comic books. On the beach, families were laughing and playing and young couples walked hand in hand near the water's edge.

I was about two blocks from my car when 911 Dispatch came over the radio: "7316 and 7313" — indicating Tyler and Cpl. Curtis Sauve — "respond to the Crosswinds Motel for a disorderly subject."

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Perhaps that was the beginning: the call over the radio — although a disorderly complaint doesn't typically signal a big problem. It could be a drunk on a bench being rude to pedestrians or someone panhandling or maybe a customer not satisfied with the service. Generally, disorderly complaints can be handled without a lot of flash or drama. Most of the time, simple clear-headed police intervention resolves the problem. Still, there have been plenty of exceptions, and although I didn't know it then, this would be one of them.

As always, I started moving toward the call location, and would proceed unless I heard from the dispatched officers that the situation was under control. The Crosswinds was about five blocks away; back in the patrol car, I was driving at the normal rate of speed and had no need to go faster.

I was on Rehoboth Avenue, maybe two blocks from the motel, when I heard Tyler come over the radio and state my badge number: "7314."

He said nothing more, but he didn't need to: I heard the urgency in his voice.

Tyler has been in law enforcement for 18 years. I've known him for 12 of those years, and one thing I know is that I have never seen him flustered.

Not ever.

As part of our training, we are required to be Tasered — since we carry Tasers — and are also required to be sprayed with pepper spray — since we carry that too. (Luckily, we aren't required to get shot, since we carry guns.) But when I think of Tyler, I recall how he was the only guy who, when Tasered, showed no emotion. The rest of us squealed like little girls as those shock-carrying prongs were shot into us, but he didn't make a sound.

And so when I heard the tension in that simple utterance of “7314,” I knew something was wrong. Also sensing his distress, Dispatch immediately radioed him and Curtis, asking if they were 10-1 (situation under control).

Tyler's reply: “Negative.”

I hit my lights and siren.

As I flew down Rehoboth Avenue, my breathing growing shallow, my pulse starting to race, I didn't notice the traffic, didn't notice the pedestrians nearby, didn't notice that the Starbucks across the street from the Crosswinds was bustling. I had one purpose: to get to my guys as quickly as possible.

Approaching the scene, I saw Tyler and Curtis on the sidewalk between the motel and a hair salon struggling with a white male. Nearby stood a pregnant woman, alternately pleading with and shrieking at the officers and darting toward and back from them. Both of them were distracted by her, ordering her to get back while they unsuccessfully tried to subdue the man who was highly agitated, apparently intoxicated, and clearly unwilling to cooperate. He was twisting and yelling, throwing his free arm around while Curtis tried to hold on to the other. I jumped the median with my vehicle, crossed Rehoboth Avenue and pulled into the salon's driveway.

The Crosswinds is a small three-story, U-shaped building with a ground-floor office facing Rehoboth Avenue. On this Sunday afternoon there was quite a bit of traffic coming and going. Those leaving were probably exhausted from their day at the beach, and those arriving were probably excited to see the low sun shimmering on the water and looking forward to dinner at a restaurant followed by a stroll on the boardwalk. Maybe the kids wanted their favorite ice cream, the treat so synonymous with the

arrival of warm weather. On that April day, in other words, there were a thousand reasons for people to be at this spot.

I jumped from my car and ran toward the struggle. Both Curtis and Tyler looked worn out: They had gray complexions; their movements seemed labored. And the man they were fighting would not let up. He was kicking. He was screaming. Curtis was trying to get the man's arms back to cuff him, but the guy would not cooperate. He'd pull his arm away, twisting around, kicking his legs so neither officer could control his movements. "F--- you, you f---ing cops!" he was screaming. "You f---ing a-----!"

On and on and on he went.

\* \* \*

But no...

That was not the beginning.

Perhaps it started between the call from dispatch and my arrival. Maybe it started after Tyler and Curtis had exhausted themselves trying to get the man into custody by going "hands-on." That's when Whitman shot him with the Taser — the first time. The initial shock dropped him but was short-lived, for he reached up, grabbed one of the probes and yanked it out. That act alone is highly unusual. Normally, the subject freezes up when hit, then drops and stops resisting.

Not this man.

Tyler Tased him again.

Same result.

Later, several people would criticize the officers for being unable to subdue this man with their hands only. "What kind of rent-a-cops were they?" they'd sneer. To them I say: These officers are in excellent physical condition. And those so quick to criticize should first take the time to view the numerous videos on YouTube showing out-of-control subjects whom three, four, even five officers cannot get under control: Drugs and adrenaline can temporarily give people incredible strength, and on that April day, the man Curtis and Tyler were trying to restrain was, I firmly believe, on something.

When I got to the scene, Curtis had one of man's hands cuffed but he couldn't get the other one back. Tyler kept trying to Tase him again, but the man was jumping around so much that he couldn't do so. Meanwhile, the man's girlfriend — who was eight months pregnant and was filming the incident with her cellphone and would not stay back — kept wailing. "Stop Tasing him!" she'd shout. "Can't you just let him go?" It was chaos, with her screaming and the boyfriend screaming and Tyler loudly insisting, "Put your hands behind your back" and Curtis ordering the girlfriend to stay away.

And all this was taking place on the sidewalk of the City of Rehoboth's main thoroughfare. There were drivers, pedestrians, moms with baby carriages, people in Starbucks, all watching.

By this time, I could see Tyler was in a fog. He was like a robot, issuing the same command — "Put your hands behind your back" — while trying repeatedly to Tase the guy, who was now on the ground. It wasn't working; I told Tyler to stop. He did. Immediately, I grabbed the suspect's free arm and secured it in the other handcuff. Finally, this ordeal would end, or so I thought. But as I looked up from cuffing him, I saw Tyler stomp the man's head twice with his boot. I jumped up, grabbed him, and yelled, "That's enough!" Tyler looked me straight in the eye and said, "He tried to bite me, and I'm *not* letting someone bite me." Later, Curtis would explain that the suspect had turned his head toward his partner's leg and appeared ready to bite it when the first kick was delivered.

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*"He tried to bite me, and I'm not letting someone bite me."* Those words make me think the beginning goes back even further...

March 19, 2013. Three weeks earlier. About 11 p.m.

This similar incident could be as good a place to start as any. Tyler and I had been dispatched to the Blue Moon, an upscale restaurant on Baltimore Avenue. Someone had reported a car parked nearby with the motor running and the driver slumped over the steering wheel. When we arrived, the witness said he saw the vehicle drive into the parking space and the driver slump over immediately after stopping. Several bystanders had offered help, but the man would only raise his head slightly, give them the finger, then drop back over the steering wheel.