

## Neither 'good' nor 'bad,' fatal police shooting was justified

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Terms like "bad shoot" and "good shoot" have no place in the discussion of the use of deadly force in law enforcement. These situations are always tragic, and no police officer ever wants to take a life. Instead, the focus should be on whether the use of deadly force was justified. To answer that question one must be guided by the evidence, rather than by appeals to emotion or prejudice.

In the Derek Hale incident, civilian and police witnesses said that when approached by the police, Hale presented himself as if he held a weapon in the pocket of his hooded sweatshirt. All witnesses stated that Hale refused to obey repeated police commands to show his hands.

In doing so, Hale provoked a standoff because officers could not safely approach him until he removed his hands from his pocket. Hale was warned that he would be Tasered if he did not comply.

Attempts to subdue Hale with two Tasers failed. One Taser probe missed and the other did not penetrate Hale's skin. Multiple witnesses said that Hale then quickly stood up, ripped out a Taser wire, and with a hand still in his sweatshirt pocket abruptly turned on an officer who was changing a Taser cartridge just five feet to Hale's left. A forensic examination confirmed that Hale was standing and turning to his left when he was shot.

The police officer who shot Hale was providing cover for his fellow officers with his drawn service weapon. The officer is well-trained, highly experienced and a true professional. When Hale turned on the officer holding the empty Taser, the officer who fired his weapon was faced with a life-or-death dilemma that required a split-second decision. The officer could have gambled that Hale was not holding a gun in his pocket, which would have meant gambling with the life of his defenseless fellow officer.

Instead, the officer relied on his experience and training. The use of deadly force is justified in order to prevent death or serious physical injury to another person. The police officer reasonably believed that Hale was about to shoot an officer to death.

The police officers on the scene that day were aware of other facts that made it reasonable to believe that Hale may be dangerous. He was a subject in a wide-ranging Delaware State Police investigation involving members of the Pagans Motorcycle Club and other individuals. Multiple suspects of that investigation had been arrested over the preceding 36 hours, some in high-risk operations.

Hale was a member of the Pagans and was known to carry a firearm. He was wanted by the Delaware State Police for felony drug trafficking, and an arrest warrant was being prepared. Drug traffickers are often armed and can be violent.

Just two days before Hale was shot, state police had seized guns, ammunition, explosives and a large quantity of drugs from the same residence where this shooting occurred. Hale was seen loading items into a car with a woman and children, which suggested he was preparing to flee.

Delaware State Police and Wilmington Police decided that the safest course would be to arrest Hale if he appeared outside the residence and away from the woman and children.

Officers moved in when the opportunity was presented. Hale would have been taken into custody safely had he simply shown his hands.

The police officer who fired his weapon was confronted with a horrible situation under incredibly stressful circumstances with no time to deliberate.

This tragedy was not of his making. He acted because he felt he had to, and his actions were justified in keeping with his experience and training. It is wrong to second-guess him from the calm of one's office. It is especially wrong to

second-guess when the evidence so strongly supports his decision to act.

A decision to settle a lawsuit arising from an incident of this nature typically involves striking a balance between cost and risk. There is always risk in litigation. Juries are unpredictable. Witnesses sometimes contradict one another, or change their stories.

Civil litigation is expensive, and where the cost of defense may exceed the cost of a negotiated resolution, elimination of the risk through settlement can sometimes make sense.

It is wrong to use the settlement of the Hale case as an excuse to label this a "bad shoot," as if the need for deadly force could ever be good.

James M. Baker is mayor of Wilmington. William S. Montgomery is chief of staff and Michael J. Szczerba is chief of police.

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**Abstract** (Document Summary)

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