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INVESTIGATING

Self-Defense

HOMICIDES

WHEN CIVILIANS USE DEADLY FORCE

SEE PAGE 20

INVESTIGATING Self-Defense HOMICIDES

RON MARTINELLI
Ph.D., BCFT, CFA, CLS

The purpose of investigation is to search for the truth. The goal of any investigation and/or resultant adjudication should be the presentation of unbiased facts and evidence to a prosecutor. The investigators and prosecutors should ultimately advocate for the facts and evidence. However, from time to time, police investigators shade their fact-finding function into an attempt to achieve what they believe to be “justice.”

Laws pertaining to self-defense today, such as “stand your ground” (also referred to as the “castle doctrine”), applied by either state statute or common law in 46 states, represent significant changes in a citizen’s civil rights. As a result, we have seen extraordinary changes in our criminal justice system. However, such laws are not without controversy.

Components such as race, religion and age of the involved parties may have little, if anything, to do with the forensic fact pattern. The prosecutor’s own beliefs regarding gun ownership, community activism and media influence can occasionally become key elements in their determinations as to whether or not to prosecute the citizens who assert that they were forced to use deadly force to defend themselves or others.

As one who has investigated hundreds of officer-involved shootings, I am keenly aware that when a shooting involves one of their own, police agencies and investigators spare no resources or expenses in their attempt to reconcile statements and forensic evidence in an effort to resolve the shooting, hopefully in favor of their officer(s). In such cases, the county prosecutor usually works in lockstep with police investigators and forensic technicians in arriving at legal determinations. Depending upon the fact pattern, more often than not the prosecutor rules that use of deadly force by the involved officer(s) was legally justified. In my line of work, this is referred to as a “good shoot.”

Citizens forced to use deadly force are different from police officers. However, police investigators need to use particular care in how they approach self-defense investigations.

The documented fact patterns of many civilian self-

defense shooting homicide incidents are not dissimilar from those in officer-involved shootings. A felony is being committed and the citizen defender and, perhaps, family members are suddenly threatened without warning, often in the dead of night. The confrontation is a rapidly evolving event; there is no police “backup” immediately available, and there is often a disparity of force posed by the assailant(s). Citizen defenders experience a sincere belief, based upon a totality of circumstances, that their lives, or the lives of others in their family or at their business, are being threatened. In the blink of an eye, they are forced to use deadly force to stop that threat.

While this article is not intended to be a legal opinion on the laws regarding self-defense and deadly force, it is important to provide some legal context. While there are slight differences among various states in the laws governing the use of deadly force, there are five basic elements regarding the legal justification of its use to resolve deadly confrontations.

1. Defender as an “innocent party”: The defender must be seen as an innocent party. This means that the citizen using deadly force must not be viewed as the aggressor who initiated or escalated the conflict.
2. Imminent fear for life: The citizen asserting self-defense must have been in imminent fear of either serious bodily injury or death to themselves or another person(s). That fear must be seen as having been objectively reasonable in consideration of the totality of circumstances that transpired during the incident. It is important to keep in mind that ultimately, the person shot does not even have to have been found to be actually **armed** with a weapon, as long as the citizen defender’s expressed fear for their life, or that of another, is seen to have been objectively reasonable at the moment they used deadly force.
3. Disparity of force: If it is objectively reasonable, safe and practical for a defender to stop a threat using a skill or weapon that is less than lethal, they are required to do so. A citizen is also required to cease using deadly force once the threat of seriously bodily injury or death has ended. Disparity of force also refers to circumstances where the assailant is larger,



stronger, younger or faster, and/or when the citizen is threatened by more than one assailant. In such situations, it might be completely reasonable for a defender to elevate to the use of deadly force. It is also important to bear in mind that defending citizens are **not required** to resort to less lethal means of defense before using deadly force.

4. Retreat as an option of defense: A number of states require that a defending citizen disengage away from a deadly threat, but **only** if it is safe and practical to do so. However, it is important to remember that citizen defenders are **not required** to place themselves and others at greater risk by attempting to escape from a deadly threat. Human factors such as “the reactionary gap,” action/reaction perception lag time and stress-induced psychophysiological challenges play a major role as to whether it is actually safe or prudent to retreat in the face of imminent jeopardy of serious bodily injury or death at close distances.
5. The “castle doctrine”: This refers to laws in 46 states governing the use of deadly force in defense of one’s home. Essentially, a citizen’s use of deadly force in defense of their home, when the occupant defender is attempting to stop or prevent a felony, is seen as having been justified, provided that the totality of circumstances support the citizen defender’s claim of self-defense and/or defense of another.

The Problems With Civilian Self-Defense Shooting Investigations

There are a number of common problems I have seen as a forensic expert when re-examining and analyzing law enforcement investigations of civilian shooting incidents where a self-defense claim is asserted. Once critical mistakes are made, it can be very difficult, if not impossible, to salvage

an investigation. What are the classic investigative mistakes?

Faulty, incomplete initial investigation by first responders: Reconciling statements with forensic evidence is a common problem in any complex investigation. Generally in smaller agencies, the average patrol officer and supervisor may lack experience in crime scene management, forensic interviewing, and the identification and collection of evidence. As a result, a problem immediately arises that the first officer(s) on scene may do a mediocre to poor job establishing and securing the crime scene, and interviewing witnesses and the citizen asserting self-defense.

Manipulating, damaging and destroying a crime scene: Upon arrival, the first moments of any crime scene investigation are critical. With every minute that passes, evidence can be moved, adulterated, destroyed, not identified and/or lost forever. Officers, emergency medical and fire personnel, and their vehicles have a tendency to destroy crime scenes by unintentionally displacing and destroying evidence. Officers knowingly and unknowingly manipulate crime scenes by moving evidence; turning on lights at the scene; damaging, destroying and/or discarding critical trace evidence; moving dead bodies; and moving weapons that the deceased subject was holding when shot.

The ability or failure to properly secure a crime scene and to identify, document and collect forensic evidence that is either exculpatory or incriminating can make or break any case for investigators or prosecutors.

Failure to properly identify and obtain initial statements from involved parties, witnesses and suspects: Identifying, sequestering and obtaining initial statements from involved parties and witnesses is critical in any investigation where self-defense is asserted. The average police officer lacks experience and skill in conducting forensic

Continued on page 22

SELF-DEFENSE

Continued from page 21

interviews where a citizen defender is involved, because these types of shootings are rare. Self-defense shooting investigations are not taught in police academies, basic detective training or even most homicide courses.

Interviewees presenting with psychological dynamics associated with stress memory recall — such as plausible possibilities, perseveration, occultation and victim trauma syndrome — can hinder initial statements. The psychophysiological impairments of temporal distortion, loss of near vision, perceptual narrowing and auditory occlusion or exclusion at the time of the incident can further impair memory and unintentionally distort a citizen defender's statement as to what transpired.

Trying to force a square peg into a round hole: Perhaps the most egregious problem I am familiar with as a forensic expert is when I investigate and analyze a self-defense shooting case where detectives initially make a non-forensic, speculative and flawed assumption regarding a defending citizen's presumption of guilt.



In such instances, detectives then attempt to wrap their "investigation" around the defective foundation of their case. Police investigators just need to report the facts.

Failure to properly reconcile statements with crime scene evidence: It is the sworn obligation of law enforcement to bring all of its investigative and forensic resources to bear when investigating any homicide incident. It is also the responsibility of officers and detectives to spend equal amounts of time and energy determining what behavior is exculpatory and innocent, versus what may be criminal. These are codified professional police practices.

A significant problem that I find in self-defense shooting investigations is the investigating officers' failure to reconcile

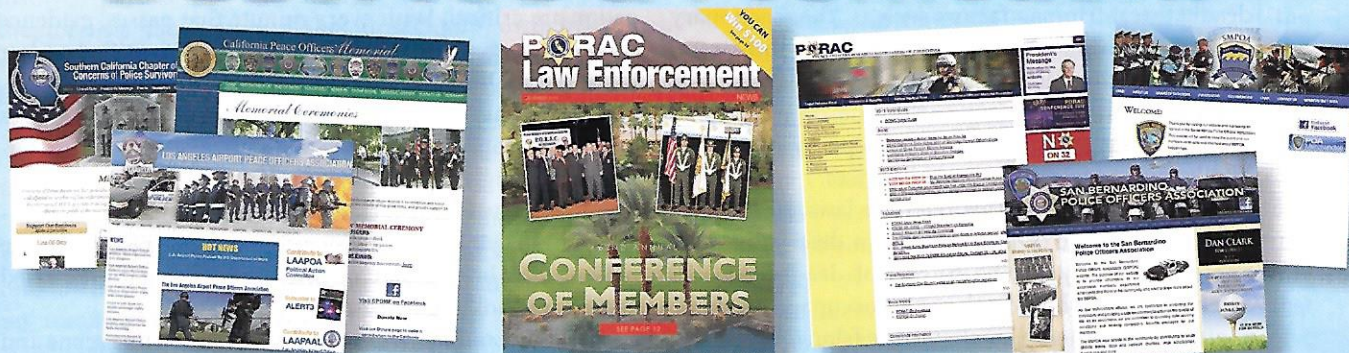
statements with forensic evidence. Again, this issue more often than not arises when officers speculate and make non-forensic credibility determinations from inexperience, personal biases and/or being underinformed or misinformed in the areas of crime scene management and forensic interviewing techniques.

While on scene, investigators need to attempt to reconstruct the crime scene as best they can, using statements and obvious forensic evidence in order to reconcile the statements of the involved parties and witnesses. This is especially important in cases where a citizen occupant defender asserts self-defense, the suspect assailant in a residence or business is deceased, and there are no witnesses to the shooting.

I would argue that the professional legal standard for the investigation and legal review of any shooting homicide incident where self-defense is asserted should be:

1. Was the shooting objectively reasonable?
2. Was there any duty for the shooter to retreat?
3. Does the legal principle of "stand your ground" apply in the circumstances presented?

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Non-fact-based, non-forensic speculation and untested credibility determinations have no place in the presentation of evidence before the trier of fact.

Defense Red Flag Warnings

Defense attorneys and prosecutors need to be keenly aware of red flag warnings. These are themes of investigative and/or prosecutorial misconduct in any investigation and prosecution of any homicide where self-defense is asserted.

Officers and prosecutors failing to adhere to codified standards of conduct:

The reasonable expectation of citizens is that police officers and prosecutors are here to protect us both physically and constitutionally. When officers, detectives or prosecutors behave in any manner that suggests or confirms their inexperience, negligence or intentional refusal to adhere to codified standards of police, legal practices and/or constitutional protections of citizens, juries become suspicious and critical.

The discovery, analysis and proper presentation of a theme of investigative and/or prosecutorial malpractice is critical to the defense of any wrongfully accused and prosecuted civilian defender.

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About the Author

Ron Martinelli, Ph.D., is a nationally renowned forensic criminologist and expert, qualified in federal and state courts in the areas of police practices, forensic investigations and uses of force. He is a retired police detective with over 20 years of field experience and, as an expert, has investigated and reviewed nearly 300 serious uses of force, including 200 shooting incidents. Dr. Martinelli specializes in death investigations including officer-involved shootings, civilian self-defense shootings and in-custody deaths. He directs the nation's only multidisciplinary civilian forensic death investigations team at Martinelli & Associates, Justice & Forensic Consultants, Inc., Temecula, California. He can be reached at (951) 719-1450 and www.martinelliandassoc.com.

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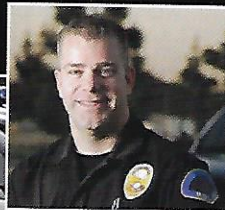
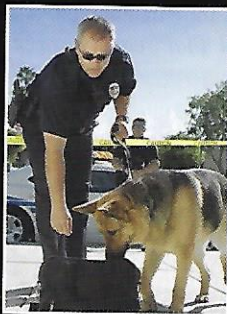
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