

Lesson 1: Podcast Transcript

Shawn Vincent:

Hey everybody, I'm Shawn Vincent. Thanks for joining us today on the podcast. This is the first episode of our new series, the *36 Lessons for Armed Defenders*. Today we're going to talk about the very first lesson, which is that the goal of self-defense is to break contact. Breaking contact could mean using your firearm with deadly force, or it could be as simple as spotting trouble before it happens to you and walking across the street. And there's a whole spectrum of options in between.

Throughout this series, you're going to hear from Steve Moses. He's a well-regarded firearms instructor and self-defense expert. You'll also hear from Don West. He's a veteran criminal defense attorney and National Trial Counsel for CCW Safe. Me, I'm a litigation consultant. I've been a jury and trial consultant on multiple self-defense cases, and for the last 10 years, we've been looking at high-profile self-defense cases here on CCW Safe and looking for the lessons learned for concealed carriers. We've bottled those all up into 36. We're glad you're here. We're going to be exploring them monthly for the next three years. We've got a lot to cover. A lot of the themes that we touch on today will be expanded upon in later episodes.

Let's get right to it. There's a lot to talk about. Here's my conversation with Don West and Steve Moses on lesson one: the goal of self-defense is to break contact.

Shawn Vincent:

So we've compiled a list of 36 lessons for armed defenders. That's the benefit of the years of experience that both of you guys have in self-defense. Steve, you as a firearms instructor and self-defense trainer, Don, you as a criminal defense attorney that's done a lot of self-defense cases, and, obviously, you're a national trial counsel for CCW Safe now. I've been working with you for a long time. We've got to work on some trials together and we've been studying high-profile cases, looking for these lessons for armed

defenders, and after, I don't know, 10 years of doing that together, there's not a lot that we find that surprises us anymore. There's a lot of really interesting scenarios, but we see otherwise good-natured, good-intentioned people make the same mistakes over and over again and sort of walk into the same problems without having had the benefit of the experience that we have.

And so we decided one thing that would be really helpful to do is write these all down and then go through and talk about them one by one. So we're ultimately going to share with our audience 36 lessons that we've curated, but we're going to start today with lesson number one, which is the goal of self-defense is to break contact.

And Steve, we joke about how when you're in the self-defense training industry that everyone plagiarizes everybody, because good ideas are sticky and everyone's happy to share it. So you've had a couple guests that you've brought on to our show that have said some variation of this, and tell us a little bit about that from your perspective, what it means when we say that the goal of self-defense is to break contact.

Steve Moses:

Well, Claude Werner was the one that would repeat that comment or that statement over and over, and I always knew that that's what needed to be done. But his articulation of it just kind of crystallized it in my mind and it made it easier, I think, when I teach my students. And break contact to me is that I do something or cause an action that prevents myself and the other person from having physical or immediate physical contact. So breaking contact can be that I can cause a pause in the action to the extent that I can create distance or get behind a barrier or inside a room (Find your hard corner #29), lock the door, drive off. To my mind, that's always preferable.

And if that is not available, then it may be that I have to take an action, whether it's verbal (De-escalate with verbal cues #19) or physical, to stop that person from making contact with me. It may be that he or she or they just stay in place so I can then get away or something that creates an impulse on their part to get away themselves. And many

times you'll see that in street encounters, as well as in home invasions and burglaries, when the armed defender responds and responds appropriately.

Shawn Vincent:

So in our conversations, and in the cases that we've looked at, I kind of looked at three different ways to break contact. They're not official categories in the world, but it's a basis for us to have our conversation today.

And the first way to break contact is to find a way to escape or walk away (Lesson #15: Don't stand your ground). If you are approached by an aggressor and you can just drive off like you mentioned, or walk away, or get behind a locked door, then you've broken contact with that potential attacker. If that's not possible, or it's not safe to do it, or feasible, then you want to do something that will cause the aggressor to decide to leave. And whether those are verbal commands (Lesson #20: De-escalate with verbal cues), that we'll talk about in a little bit, or some show of force shy of using lethal force (Lesson #19: Understand less lethal options), that's an alternative. And then when those options aren't viable or have been exhausted, now we go to the firearm. Let's say that you've already used less lethal options. You had the opportunity to do that. Now we're using lethal force to stop the attack. If you can incapacitate someone, you've broken contact, if you can get away, right?

Steve Moses:

Either the application of lethal force or the threat of using lethal force (Lesson #22: Understand less-lethal options), if the opportunity presents itself and if the opportunity presents itself, that should always be our first option. And if we have made the decision that we need to shoot that person and we see anything in their action that suggests that it's not necessary, a pause, breaking off, then we need to get that gun back out of play (Lesson #6: Don't shoot AFTER the threat is over). Doesn't mean holster, it doesn't mean walk away, but don't point that gun at that person or in their direction anymore.

Shawn Vincent:

Once the threat has been eliminated.

Steve Moses:

Yes.

Shawn Vincent:

Don, so we were talking about this with Steve from a tactical point of view, that the ultimate, the physical goal of self-defense is to break contact. And if you can do it without using deadly force, that's obviously preferable. Tell us how you receive that from the criminal defense lawyer's point of view, from the legal point of view.

Don West:

Well, the best self-defense mindset is that you don't want to engage someone you don't have to (Lesson #12: Don't start needless arguments). And to the extent you have to engage them, you manage that level of engagement up until the point that you can't. And only then do you have to use deadly force. That's sort of a continuum of sorts. Sometimes, as Steve well knows from his experience and training, that could happen in a second or two. It could also be considerably longer than that, depending on the context and the circumstances. But to the extent, as we were calling it today, breaking contact, I'm calling it for my purposes, avoiding (Lesson #36: Avoid the fight), avoiding using deadly force because I think that translates well into the courtroom. The prosecutor has to establish, ultimately at the end of the day, to convict you of a crime arising from a self-defense incident, proof beyond a reasonable doubt that you did not act in self-defense.

Well, one of the ways that self-defense can be defeated is an argument that the person was looking for a fight (Lesson #11: Don't provoke a potential aggressor). They were looking for an excuse to use force or deadly force. And that's why we talk so much about ... don't be the person characterized as the initiator, as the first aggressor. Don't be the person that provokes the incident because you'll lose the right to defend yourself in that sense.

So the prosecutor may look for a predisposition of sorts. That's why they look through social media and other sources of information that might help frame what was going on in your head so they can come up with an argument (Lesson #33: Don't say foolish things). Well, he didn't have to kill somebody, he just wanted to. Or perhaps that since your fear of confronting this imminent threat of great bodily harm or death has to be reasonable at the end of the day (Lesson #5: The belief of imminent harm or death must be reasonable). Another argument might be, well, this wasn't a reasoned response. This was a panicked, unreasonable response, and as a result, it was not lawful because the litmus test for every aspect of self-defense will be whether or not your actions were reasonable within the context that the jury will then see you were placed.

They'll look at everything around you. They will try to look at information that you give them if you made a statement or your testimony, and then decide ultimately whether your actions were reasonable. They can conclude that you were attacked. You had very good reason to use force, but they could conclude that your use of deadly force was not reasonable. Why? Too quick (Lesson #6: Don't shoot BEFORE the threat is imminent). Disproportional (Lesson #18: Respond proportionately to unarmed threats). Lots of things that can alter or skew self-defense. So that's a long way of saying, from a criminal defense lawyer's standpoint, anything that you have done to avoid, to break contact, to de-escalate, to use something less than deadly force as your first choice in this confrontation simply looks good. It looks good because it helps bolster your argument that you acted reasonably and rationally and ultimately lawfully in the face of a deadly force threat.

Shawn Vincent:

So we're placing these de-escalation, avoidance, less-lethal, verbal commands ... we've been building a spectrum of tools that an armed defender has to break contact, right? And we've all had this conversation before. There are self-defense scenarios that unfold so quickly that there's not a lot of time for verbal commands or other options, carjackings, or we've seen videos of home invasions. There are scenarios where an armed defender has to make a decision, life or death, very quickly, right?

Steve Moses:

Yes, sir. Yes sir.

Shawn Vincent:

But Don, I think you can attest that we see all the time use of force incidents that unfolded over the course of several seconds or sometimes minutes that are the result of an argument that escalated, it became physical, or road rage, or an encounter at a gas station that goes sideways. And it's in scenarios like those that are, frankly, the most controversial legally, right? Because in the scenario that we described to Steve, a carjacking or a home invasion, very frequently we don't see those get charged unless there are some extraordinary extenuating circumstances. It's these other cases where there was a period of escalation, where the defender had, from the prosecutor's point of view, other opportunities.

Don West:

Well, I'll jump in and say yes, I agree with that from my personal and professional experience, talking with lots of people that have been involved in self-defense incidents, and the vast majority seemed to come out of an argument, whether it's road rage or a parking spot or a bar fight or something, rather than statistically a home invasion or an armed robbery or something like that (Lesson #12: Don't start needless arguments). So it doesn't mean that you couldn't, in fact, be in one of those situations, but I think statistically from my experience, you're far more likely to get crossways with someone. And then that starts as an argument and then escalates to the point of force. And I can certainly also add that, if you are the one who's armed, and you're dealing with someone who's extremely aggressive, maybe physically capable and truly threatening and able to seriously injure you or kill you, you are still at a disadvantage legally (Lesson #18: Respond proportionately to unarmed threats).

Tactically, you better use your gun if in fact you need to. But legally, anyone who's charged with murdering what the prosecutor will characterize as an unarmed person, I think gives you at least one, if not two strikes against you at being able to show the jury, the fact finder or the judge or the prosecutor along the way, even law enforcement as

they're investigating this, that not withstanding what looks like an apparent disparate use of force, disproportional use of force, you still had every legal reason to do what you did. And frankly, I think in that situation, the idea of attempting to break contact, doing what you can to avoid the situation first will be the one that probably saves the day ultimately.

Shawn Vincent:

Sure. And what you're describing with this disparate use of force, an armed offender facing an aggressor who is apparently unarmed but still capable of causing harm, we know that someone can cause a lot of harm with their fists or with blunt weapons or things, we call that the armed defender's dilemma very often, which is, okay, now I'm facing this threat. We're not sure if and when this becomes a life-threatening attack or something that could cause great bodily harm. And now, how do we negotiate that? And I think that Steve's going to open us up to the spectrum that we were talking about of actions.

And so I'd love to talk to you first about the set of actions that you can use that will remove yourself safely from the situation. And let's imagine, I think often when we're talking about this, it's maybe we're at a gas station, at a gas pump, or we're walking on the street, and we see somebody coming towards us that's acting aggressively—that we have a concern that this person might be a problem.

Steve Moses:

Yes, sir. All of this starts, of course, with situational awareness (Lesson #9: Maintain situational awareness), and that's more than just say: "Hey, be aware. Keep your head up." Actually, realize in an environment that you're not completely familiar with, and this could even occur in one of those environments, it could still happen, is that there is a potential threat around you. So scan the area, look near to far. If you are on the street, do not walk around looking at your phone, on your cell phone, keep your head up and look around. If you go to a gas station, one of the things that you will see is you will see people that are either on their cell phone or maybe they're filling their vehicle and they're standing there with their back to the pumps. They cannot see behind them. They

can't see what's on either side. And so if you have to be in that position, then just do just a calm scan. Pretend you're a tomcat that's about to go in a room. He will look around before he goes into that room. We need to do the same thing.

Also, I refer to it as tactical positioning. Where can I position myself so that I can see the most, I can see the largest angle of area? Man, I'd love to be able to see 180 degrees with just an arm stretch scan and then turn that around, swivel that around so I can look at that. When I walk into a restaurant with my wife, she heads exactly to the table that she knows I want to be situated on or situated at, and which seat to sit on. And I'll sit there and I'm looking, okay, you know what? I'm in a corner here. I can see that door over there. I can see the kitchen and I can see this other door. And so just little things like that basically set you up for success.

The other thing, in my opinion, if you're talking about predators or just anybody that wants to harm you or take something from you of value, whether it's your health, your dignity or your valuables, your wife, your person, your vehicle—I want to be kind of on the lookout for those people and I want to go, okay, possibly that's somebody I need to be aware of.

Now, when I see that person that causes to be concerned, what I'd like to do is I would like to do one of two things. Either create distance between them and myself, or basically put myself in a situation where I can now avoid that situation. So if I'm walking down the street, and here come two guys walking down the street, and they look suspicious in any way or any concern, and a lot of times it looks like they have a plan. They may be speaking to each other, they're not making eye contact with you, and you're like going, okay, I think these guys are going to maybe try to get close to me, then do something unexpected. Stop, go across the street, stop, your parking lot, walk off at a different angle. Or if you have to, turn around and walk at a brisk rate so that if they want to keep maintaining distance with you or go ahead and get closer, they're going to have to speed up as well.

Shawn Vincent:

Right. It helps you read their intentions more if they do something to follow you.

Steve Moses:

I'm forcing them to show something or to cause me force them to do something or for them to say, hey, I don't think this guy's the guy we want to tackle with. And you talk to prisoners that have committed violent crimes, I know there was a study done on that, and these prisoners, they were shown all these images of people, and they showed them to the same type of guys or group of guys that committed these violent crimes. They said, "Would you choose them? Would you choose them? Would you choose them? Would you choose them?" Okay. And then they take them all. And they're surprised because of some of the people that they would choose were very athletic, very capable-looking young men, and some of them that they chose to avoid or not choose were little old ladies, and old men, and small females. And they say, well, what's the difference? That person doesn't see me. That person doesn't look like they'll put up any kind of resistance, and that person looks like they might. And so you're sending off those signals.

Shawn Vincent:

Here's what I'd love for you to talk about a little bit is ... you've given us some ways to physically show that you're aware that you're not approachable, that you're in control. But tell me a little bit now when this gets to the point where there is a verbal engagement here, because there's something that you talk about that I don't think a lot of people think about, and this is instead of just giving out verbal commands, we like to say verbal commands, but there's, what is it, an ask-tell (Lesson #20: De-escalate with verbal cues)?

Steve Moses:

Yes, yes.

Shawn Vincent:

Go for that.

Steve Moses:

I default automatically to a script. And I've actually had what I consider to be a lot of practice doing that because of the time that I lived in a high-crime area in Dallas with my wife, in which I have found that I want to ask people, or I want to very politely refuse them. So with the people that I do, or I knew they were going to come up and ask me for money, I would simply say, "I'm sorry, but I can't help you." And I would start arcing off at a distance. I don't want to be there so they can continue to approach. I want to do that. Okay, I want to start... 'Cause I want to see if they're going to follow me. A lot of instances, they'll follow me.

And at that time, I won't say "You need to stay back." And at that point, I have a firm voice. I'm not being hateful. I'm not telling them to back off. I'm not saying leave. I'm just saying, "You need to stay back." One of the things that I believe is that regardless of, I don't care how rough your childhood was, you heard that command from somebody that cared about you, that didn't want you to get hurt, and they'd say, "Stay back kids" or "you need to stay back." And so you understand that. If that is not the issue on the first one is I don't know what this guy's coming up, but he's coming up pretty quick to me, and before I do anything else, I'm going to say, "Do you mind staying back?" And can I get your hand up. "Do you mind staying back?" And most people, I have found almost everybody, "Well, okay, okay, all right?" They didn't realize they were encroaching, or they knew that they weren't going to get what they wanted if they continue to move on you.

And if they kept continuing to move on me, I'm like going, okay, now's the time to issue that command. So basically I've asked, I've told, and now I command. And for me, I still resort to a loud, stay back. And it's hard to explain to people how to do it, but I come from my diaphragm. So if you're getting ready to take a big breath or really yell hard, you kind of force that air out from your diaphragm and "Stay Back!" And it's loud. And they know I mean business. And they also know if it matters is that everybody within a city block heard me, and I know people that hasn't worked. And then you're going to force, you're going to use the least amount of force that you can that you believe will

handle that, knowing that you better know what you're doing, you better do it effectively, or you can make things worse.

Shawn Vincent:

So, before we transition into force, even the less lethal force as a way of breaking contact, Don, all those things that Steve just described are articulable efforts to either avoid or de-escalate a potential confrontation. And if things escalate from there, the armed defender who made those choices has a way to explain what they did in advance of using lethal force. And yet at the very beginning, you're talking about how a prosecutor is going to look and see: were the actions reasonable? And if they can say, "I saw them coming. I tried to move to the other side of the street. They followed me. I asked them to stay back. I told them, I commanded them, and they still came forward," — now the intent of this aggressor is so much clearer for the armed defender. They can make these next difficult choices with more clarity. And if they can articulate them, they're just on a stronger footing if they have to justify their actions, right?

Don West:

Yeah, that's exactly what I was talking about—where you're establishing your role as not the initial aggressor (Lesson #10: Don't be the first aggressor). It's clear in that sequence you're not provoking the other person to try you, for example (Lesson #11: Don't provoke a potential aggressor). That's sort of the provocateur, the provocation thing is "mess around and find out" kind of thing. You're not doing any of that stuff. And you are doing it in such a way that any normal, reasonable person that was making a mistake by coming at you too quickly, because they were distracted or whatever, are going to snap out of it and realize, wait a second, and everybody can laugh and go about their business (Lesson #13: Don't assume an aggressor is rational). At the same time that you are establishing that for yourself from how others would look at your conduct, you're also making a lot of headway in the, what's the word? Disambiguating?

Shawn Vincent:

You're disambiguating their intentions.

Don West:

So you're getting a lot of traction out of all of this. You're disambiguating what they're doing. You're learning more and more as they ignore your commands or continue to close the space. At the same time, you're establishing that you really don't want any parts of this, just leave me alone and we're good, kind of thing.

Shawn Vincent:

And Steve, I think you hit on this a little bit, and I've heard you talk about it before. There's almost a demonstrative aspect to this where, if there are people around, if things go bad are witnesses to what happened. And if you comport yourself in a way where they see that this is going down and you demonstrate that you're taking these steps and giving these ask-tell commands, trying to step aside, Don, those are things that are going to end up in a police report. You sent me some things about an incident today where I read what people saw, what they recorded on their cameras, their cell phone cameras, and what they described to police makes a big difference.

Steve Moses:

That, and I tell you what, I don't care where you are, assume there are witnesses because if you assume there are witnesses and you don't want to do anything that might make it worse on you, you're probably going to choose your actions better.

Shawn Vincent:

Something I want to reiterate, you talked about creating distance if you can, and we've just talked about some tactics that can give you more time to make your decision if you feel like things need to move to force, and I suppose that at some point that time starts to run short, and now you have some difficult choices to make. But Don, if we're dealing, and I think this conversation is mostly about dealing with potentially unarmed threats because Steve, you agree, if at this point somebody pulls a firearm on you, we go right to the end of this spectrum, and we have to make that decision. But now we're still trying to determine, okay, this person's not listened to me, they've not picked up on my body language, they've not listened to my ask, they've not listened to my command. Now I'm going to have to get rough to break contact because I can't get away safely or reasonably.

So if we have the time still, and maybe it's because we've created the time with a little bit of distance and our tactics, there are less lethal options (Lesson #19: Understand less-lethal options) than your firearm that you can try.

Steve Moses:

Yes, there are, with the understanding that a less-lethal action can sometimes turn out to be lethal. You need to understand that ...

Shawn Vincent:

That's what we call it “less-lethal” and not “non-lethal.”

Steve Moses:

Yeah, you use less-lethal. Say, for instance, you're on a busy highway and this guy is standing by your car, and for whatever reason you can't get the window up, you better have your window up and not be out, and you spray him and he steps back in traffic, you've got a problem.

Shawn Vincent:

And you spray him with an OC spray.

Steve Moses:

Spray him with OC. Yes. So understand that anytime that you use any kind of force, there still is a possibility that you could cause serious bodily injury.

Shawn Vincent:

It's not hypothetical, Steve, 'cause I worked on a case where a guy pushed somebody at the front of a bar, and this guy was so drunk that he stumbled between two cars and into a road and got hit and dragged about 80 feet by an oncoming vehicle.

Steve Moses:

Oh yeah.

Shawn Vincent:

And so just his hands pushing him ended up being lethal.

Steve Moses:

Yeah, you fall backwards and you're drunk or you just got caught completely off guard or you're not particularly athletic, you hit the back of your head. People die from that all the time, or suffer very severe traumatic brain injury. There's two methods that I am an advocate of. The first is always going to be OC. And when I say OC, I mean pepper spray. My preference is always going to be a stream as opposed to a spray. The reason I'm opposed to sprays is that you have a cross-contamination danger. And most police officers that ever used OC spray say that they will never use it as an armed defender just because of, okay, they've been sprayed so many times.

Shawn Vincent:

Cross-contamination, meaning they get it too, right?

Steve Moses:

Yeah. Yes, yes, yes. And so the problem there is just, okay, it's just like an air freshener or something. You spray it around, you got all these little droplets. Now, OC Stream, my particular favorite is POM, P-O-M. It's a very decent OC. I think it's got oleoresin capsicum ... content is like 1.4% and I may have mispronounced that. I hear it pronounced way less than I just see it in print. So it's pretty effective, and you almost have to be quasi-surgical with it and use it like a water pistol. Chuck Haggard is ...

Don West:

That's why they call it "OC spray" 'cause nobody can pronounce it, Steve.

Steve Moses:

That's right. That's right. Pepper spray. So it's a weaponized food condiment as Chuck would say that.

Shawn Vincent:

Yeah, I agree.

Steve Moses:

And that's always going to be my first choice. But understand that you have to know how to use it, how to deploy it, and by that, that means you got to get your thumb on that toggle. You got to get the nozzle aimed so you don't spray yourself. That's why you need a little safety toggle on it. And-

Shawn Vincent:

And a little practice with it, frankly ...

Steve Moses:

You need to do a little practice at it and understand that, okay, this is a distance weapon, a distance defensive tool. So I want it to occur well outside of arm contact or physical contact, both of our wingspan.

The second thing that you can do if you do not have that available or you are not able to get to that is going to be basically something like Craig Douglas and the collective that he works with, they refer to it as the eye thump. I call it face thump, just simply because I'm really not going for their eyes. I'm actually going for their entire face, and it's a very loose hand. So basically, that's all I'm doing. So I strike with the balls and the tips of my fingers, not my fingernails. And my only objective there is that I want someone to either react, which gives me distance where I can start breaking contact if I take another action or cause them to be deterred or basically have a minor physical effect, 'cause it's like OC in your hand. You do something that disrupts their vision in one eye or the other for a few seconds. In a lot of instances, that will cause that person to be dissuaded. So those are a couple of options.

The other thing I think it is important, too is ... learn how to block a punch. And when I say block a punch, it's non-diagnostic, you're not doing anything like you see on the movies, TV, martial arts. It's just a technique where you learn how to wrap your hands and your arms around your head in such a manner that it's very difficult for someone to

hit you in the temple, on the side of the jaw, the chin, the back of the head, any of these areas that could cause you to be knocked out or knocked down. If you have those three tools and you're halfway decent at them and you can use them, then your odds of being successful are much better. But if you have nothing else except just OC and the willingness to use it, and you have that mindset and you have it on your person, you know how to use it, you're way better off probably than you are right now.

Shawn Vincent:

If we're looking at this whole conversation as the goal of self-defense being to break contact, OC spray is about really being such a pain in the ass and causing so much discomfort to this attacker that they decide it's not worth it. Because we know that some people can power through OC spray if they are really, really motivated. But then, Don, we talked about disambiguation, Steve, looking for the intent. If someone's still attacking you after you've loaded their face full of OC spray, now you're certain you've got a pretty big problem on your hands, right?

Steve Moses:

Well, you do. And the thing is that if you hit me with OC, whether it is the stream or the spray, and I'm close enough to get my hands on you and I'm bigger and I'm way more skilled than the average person even at my age with all my stuff and everything, okay, you're in trouble.

Shawn Vincent:

I wouldn't mess with you.

Steve Moses:

Well, thank you. So that's one of the things that I always have big reservations when they say, "Well, that person was unarmed." That does not mean that they are not dangerous.

Shawn Vincent:

And not capable.

Steve Moses:

They could still be very, very dangerous.

Shawn Vincent:

Before we wrap up on this, I want to ask Don a couple of questions about it from a legal perspective, but you talked about the face, what do you call it? The face poke or...

Steve Moses:

I call it the face thump.

Shawn Vincent:

The face thump.

Steve Moses:

Craig calls it, I mean ...

Shawn Vincent:

An eye thump.

Steve Moses:

He calls it kind of the eye thump because you want to get up there, but I work with church security teams, so I don't like to be out there, let the minister say, I'm teaching you how to do an eye thump.

Shawn Vincent:

And every time you talk about this, it makes me think of The Three Stooges. It's sort of like a Moe in the eyes. And I know you talked about this. It's not really to either blind them or to incapacitate them. It's to break ... you've taught me about the OODA loop, right?

Steve Moses:

Yes.

Shawn Vincent:

Which is what? Observe, Orient, Decide, and Act. What you're really doing is doing something that's unexpected to them, that startles them, that has some physical contact so they know that this is happening, and that's going to cause them to assess their plans.

Steve Moses:

Well, it's basically the same thing with OC. You just can't see, and I mean, I tell you what, I've been in OC-ed the police academy, and I've been sprayed back and everything. I'm not gagging. I'm not retching. It's not that I can't breathe. I can do all of those things, but I can't see, I can't keep my eyes open. And so you'll actually see a cadet in the police academy that, okay, if they got sprayed and they need to shoot somebody, they will literally take one hand and pry their eyes open so they can do it. 'Cause it is just that... Imagine just a hot pepper thrown right in your eyes.

Shawn Vincent:

Yeah, no, I don't have to imagine. I like hot sauce, and I've accidentally touched my eye after eating, and I do, I have to squeeze it open. Don, all this talk about this less-lethal force, now that we've gotten to the point of using force, there could be legal consequences to it. But I think what we try to reinforce to everyone is that the legal consequence of being unjustified in using less lethal force is so much lower than if you go to a firearm, even just the threat of deadly force.

Don West:

Sure, sure. And that's another podcast on defensive display (Lesson #22: Defensive display is a viable alternative), how just the manner in which you hold the firearm can, well, it can dictate the outcome of the confrontation, but it can also, I think, clearly direct how the case is going to be viewed and or prosecuted. Sure. I think any demonstrated use of any de-escalating stuff, including the use of less-lethal stuff before you have to resort to deadly force, and frankly, the ability to explain why you couldn't do anything else than what you did, keeping in mind, you're going to have to justify your

conduct in some way because self-defense is an affirmative defense. So you may have to skip over a step or two because of the circumstances, but if you can explain what your mindset was, what you wanted to do, but you couldn't, even if you do wind up using your firearm sooner than you would've hoped or at all, then you're well on the way to being able to be viewed as the reasonable one in this context.

I don't know how much time, Shawn, you want to go today on this, but something came to me as we're talking about the de-escalation and the defensive mindset. What about these cases? And these are the kinds of cases that I often see, as I commented before, that start as road rage cases. So the roles aren't clearly defined. If you're standing on the street or walking down the street, minding your own business, and people start hassling you and you don't know whether they're going to attack you or rob you or whatever—that's relatively well-defined, and you know what to do to sort this out before it gets to the point that you hope it never gets to.

Road rage is the bane of my existence when it comes to dealing with people that are good, upstanding people that get involved in these incidents where they are both aggressors, both of them think they're right, both of them are offended by the actions of the other person. And if it's just yelling and screaming and waving your fingers as you go about the rest of your day, that's one thing. But I can't tell you how many times I've seen people pull guns on other people as they're driving right alongside them, or even worse. And these are the ones that can turn out deadly, where both motorists pull over, stop their cars, and get out to face each other. So then you are assuming, I take it, that the other person will be at least as reasonable as you are, assuming you don't want it to get to the point of somebody getting hurt (Lesson #13: Don't assume an aggressor is rational). But who knows? It's completely unpredictable, and I don't know, Steve, maybe helping somebody know how to de-escalate, how to withdraw when you may in fact be perceived as the initial aggressor yourself.

Steve Moses:

Yes. Just that understanding, okay, this situation is about to get away from me, it's in danger of getting away from me, and now it is time to de-escalate, which means you're

right, I'm wrong. I am so sorry (Lesson #20: De-escalate with verbal cues). And sometimes hell yes, you're wrong and I'm going to teach you a lesson. Well, we need to understand, okay, man, I want no part of you. And the other thing is that a lot of people, I don't think they realize that unless my wife is in my vehicle, there's no reason I can't leave my vehicle (Lesson #15: Don't stand your ground).

So if for whatever reason I've pulled over and some guy comes up there and puts me in a bad situation and starts confronting me, I'm just going to walk away. I'm going to get away from it. If he steals my car, if he wrecks my car, I've had over my lifetime, I've had a bunch of cars, it's insured, I'll replace it. I'll be mad. I'll play this thing over and over at night in my head of I wish I had done that. And then I think about all those times that I played that in my head, and then I didn't act over it. And then later I'm like going: "Good God, thank you, Lord!"

Shawn Vincent:

Oh, so what you're saying is ... when someone did something to piss you off that was rude or disrespectful, and you have like, oh, I wish I was the kind of guy who could just say this. But then you find out later, yeah, a terrible idea. Well, I mean, Don, you talk about this all the time. You don't know how the other person's going to react, and you might assume that they're going to be rational, but so very often people act irrationally when they're confronted in some of these weird situations. One of our lessons is: don't get emotionally hijacked ... gets caught up in whatever circumstance is going on. They get dragged into it and take a step towards it, say something nasty back, or make a posture that's aggressive back—almost without thinking about it. So instead of taking an opportunity to bring it down or to walk away or to drive away or to give a verbal ask, tell, or command to bring it down, they fall into it, and they miss that chance, and they actually ratchet it up. Is that what you're hitting at, Don?

Don West:

Yeah, I really think in that scenario it takes two, takes two to tango, and that if one person is committed to not letting that happen, it's going to be really difficult for the other motorist to put you in a situation where you have no choice because there's going

to be an opportunity to get away. You may have to drive over a curb or run a red light, but those are reasonable. I think those are reasonable decisions rather than sitting there or getting out of the car to confront somebody. I have this image 'cause that picture has been painted by people involved in those situations. It's like the O.K. Corral. It doesn't really matter who started it. There's a lot of people shot and a lot of people dead. And when you get out of a car to confront somebody who has also gotten out of the car, you're placing a lot of faith that that person is going to simply want to yell at you (Lesson #14: Don't leave a place of safety to confront a threat).

And they are doing the same. Likewise, they have a lot of faith that you're just going to yell back and maybe apologize for being such a terrible driver. But then all of a sudden there's a weapon shown, displayed, feared. You stick your hand in the pocket to get the cell phone, to get the guy's license plate. He thinks you're going for a gun, and there you two are away, 15 feet away. And then ...

Shawn Vincent:

Well, it's the opposite of breaking contact.

Don West:

Yeah, good point. Bottom line, right? Bottom line.

Shawn Vincent:

Let's talk a little bit before we move to the actual use of deadly force. We touched on it a little bit, but: defensive display (Lesson #22: Defensive display is a viable alternative). The longer we've been working together, the more we've talked about defensive display as a viable less-lethal use of force—meaning, Don, legally, the display of a firearm is the threat of using deadly force.

Don West:

Well, yes, of course it is, because a firearm is deadly force. You discharge a firearm, you have used deadly force. Whether it goes off as a warning shot or as an attempt to defend yourself or not, it is deadly force, which necessarily then puts a different set of legal

principles in play. Displaying a firearm and not shooting it is probably not the use of deadly force, meaning a different standard would apply to the risk that you face of being prosecuted.

Shawn Vincent:

Sure. So your legal jeopardy is lower for displaying a firearm than firing a firearm, even if nobody's hurt, right?

Don West:

Yeah, those two, yes, for sure.

Shawn Vincent:

For sure. Yeah. And that's why, to throw this in the mix here, we've had conversations about this. One of the lessons, one of the 36 lessons (Lesson #24: Don't fire warning shots) is going to be don't fire warning shots because a warning shot is the use of deadly force, but without necessarily the effective ability to break contact or stop the threat in a definitive way. But defensive display, we've seen that work where somebody, especially if they've had the verbal commands involved, and they've tried some of the other de-escalation efforts, can cause the attacker to decide this isn't worth it and walk away. And if they can do that properly and justifiably, then they can break contact with a lot less, what you're saying, Don, legal jeopardy than if they go right to the end.

Don West:

Yes, absolutely. Are you asking when you can do that? Because that is a long, involved, and very imprecise conversation. That's the problem with defensive display, frankly, is there are no clear-cut rules. This isn't a bright-line discussion from a legal standpoint. It may be more so from Steve's tactical standpoint, but from a legal standpoint, in some places, defensive display, aggravated assault, use of a weapon, can be simply putting your hand on the butt of your gun over your shirt, all the way from drawing it and pointing it with two hands at somebody. So.

Shawn Vincent:

Well, defensive display is lesson number 22, Don. So we will have that longer conversation and get there. But in a lot of ways, a lot of the things that we're talking about under this first idea—that the goal of self-defense is to break contact—includes a lot of things that we'll be talking about later. And I think you pegged it early on when you said, really, it's about establishing the right mindset and why you're using force to defend yourself and when that's appropriate.

We covered the Amber Guyger case, and she was an off-duty Dallas police officer who went to the wrong apartment. She thought it was hers, but when she thought that she had faced an intruder in her home, she fired. He ended up dying, and they asked her and Don, I think you watched a lot of this trial as it was happening. Did she mean to kill him? And she said yes. She used deadly force, but I don't think that's necessarily what she meant. And Steve, lesson one is not, the goal of self-defense is to kill your attacker, right?

Steve Moses:

Well, I think a lot of people, and this is maybe true for some of the law enforcement people, the way they go through the police academy and such is that you think that the application of lethal force is going to kill somebody. So I was willing to use lethal force to protect myself, and I knew that lethal force kills. So that's why I did that is because I wasn't shooting to wound, I was shooting to stop. Just a horrible choice of words. It might've been some of the mindsets that you will hear. You don't hear it like you used to, but people used to, in order to really try to get that aggressive survival defensive mindset, understand that you're going to kill this guy, you're killing this guy to save your life or he's going to kill you. And so they kind of do that to get that whole little warrior ethos thing going.

And you know what? They're not military. They're not Force Recon Marines, or DEV Group, or The Unit, or Rangers—or anything else like that. They're in a whole different deal. And people don't really realize how restrictive the military is in terms of their rules of engagement. And so they are way more restrictive than people think. And so it's not about trying to kill that person, it's understanding that it may take an action that will

cause their death or serious bodily injury if you do it. But still, that's the only way to stop the threat.

Shawn Vincent:

And where that becomes important, Don, from the legal defense perspective, after a deadly shooting, is that the prosecutors will be looking for the motives of the shooter, in a self-defense case. And we know that sometimes in the heat of the moment, adrenaline gets going. Somebody was very afraid for their life at one point. But there's also a little bit of anger, sometimes a lot of anger that gets involved—other emotions are infected. And sometimes we see armed defenders fire more than was necessary to stop the attack. Sometimes they've broken contact, and they continue to fire (Lesson #7: Don't shoot AFTER the threat is over). Other times, there's some real evidence in their actions—maybe witnesses provided—that would suspect that this person had it coming, and there's a little bit of revenge that gets worked into it. And so Steve, you're talking about that warrior ethos, that mentality, if you have that, and you're ... in that life-or-death situation ... and you make the decision to use deadly force, you can basically overkill. You can overdo it and then make a justifiable shooting unjustified.

Steve Moses:

Yes. And you can also make a justified shooting look like it wasn't justified because of your lack of skills or the difficulty in the situation, because people that do not want to stop are incredibly difficult to basically stop and kill them. And there are just a very few critical areas of the human body. It's basically going to be the brain stem ... maybe let's just talk about stopping a threat ... could be a hit to the brain stem, center of the spine, aortic arch, vena cava, great vessels. Unless you perforate that, that's like a hydraulic pump there. And so you've got all these hoses, and until that hydraulic pump, the heart can't work anymore, the person can't continue. And so there have just been a multitude of people that have been shot 30 and 40 times and survived. And it's just like there's just not that much critical real estate.

The other side of that is that the majority of people, and this may be what some of that's about, they were willing to break contact, and they really didn't have the opportunity to

because the other person just started shooting them, just kept shooting. And that's why a lot of people also get hit multiple times in the back. Now, I'll give a person under the right circumstances the benefit of the doubt for shooting someone in the back. Because if you were making a commitment to take that shot and you were in the very act of pressing that trigger, that person can literally turn sideways or maybe fully all the way around and you hit them in the back (Lesson #7: Don't shoot AFTER the threat is over). But that wasn't intentional.

Don West:

I think that Amber Guyger's poor choice of words was just that. I don't know why she chose those words, whether she had ever uttered them before describing what her mental state was at the time. I think somebody may have dropped the ball, frankly, in terms of pre-trial preparation. Whether the question wasn't asked or, like I said, I don't know what she said before, maybe she had been committed to that, but I was watching that live, that testimony, and I had this funny feeling in my stomach just because I knew that was a bad thing to say. It didn't necessarily change self-defense, frankly, but it was a bad thing to say because of the way it affected those hearing her and trying to figure out what her motives were.

Shawn Vincent:

What her motives were. Right.

Don West:

Yeah. And I thought that was extremely unfortunate. To your point though, Steve, when lots of shots are fired, maybe more than you need to for lack of training in some regards, would you not agree with me that when the medical examiner says there were two shots in the back, that's a bad look.

Steve Moses:

That's a very bad look.

Don West:

That's something you have to explain. And what you were saying is: Yeah, there's ways to explain it without it being what it seems it is, right? Do you agree as well that if you shoot somebody in the back, there's an argument to be made that they were fleeing, they were trying to get away, and if they're trying to get away, they're not a threat to you at that moment? So you could not legally justify purposefully shooting them in the back. That enters into all of those areas of anger and spite and depraved, heartless, or revenge, or I'll show you, all of that stuff that you really don't want to have to deal with in your self-defense trial.

Regrettably, there are those situations where it just happens because of the dynamic scenario that the two people are involved in, and there are expert witnesses that can satisfactorily explain that, whether they're use of force experts and biomechanical engineer analysts, and such. But I think we would all agree you'd rather not have to deal with that if you can, because anything the prosecutor can grab onto to suggest that you weren't simply neutralizing the threat, that you had another agenda, you had a little rage on board, or something else is a problem that you have to ultimately overcome to preserve your self-defense claim.

Steve Moses:

That is an enormous problem to the extent that we now incorporate in much of our training when to stop shooting, and we actually use a visual signal that says when you could start and when you stop, and then if you continue shooting any greater than a half second after the signal went off, then we're going, okay, that's a bad shoot. And then I go, well, I don't understand. And the reason is you're shooting at an inanimate target that's not moving, okay? You're getting no reaction, you're getting no feedback from the target.

However, in real life, not only are you getting all of these actions that are giving you information, if the person moves, guess what? You miss (Lesson #35: You're responsible for every bullet). And this shot that you thought went here, went here, and this shot that you went here went over his shoulder. It's because you have to adjust and stay in the moment. And a lot of people ... they go cyclic. And so you'll listen to a gun, I'll say a

shooting as opposed to a gunfight. It's just bang, bang, bang, bang, bang, bang, bang. I guarantee you, they were not doing what we want our students to do: assess the response to the last shot you fired before firing another shot. You basically assess every shot, and it just all comes back. It all comes back to ideally training, if not training, then knowledge that, hopefully, we are imparting on this podcast.

Shawn Vincent:

I really like that, Steve: “assess every shot.” We'll talk about that in the future, that you're responsible for every shot (Lesson #35), and what you said before, Don, every bullet comes with a lawyer, when you're trying to justify—every bullet has to be justified. That's the bottom line. And if you've already broken contact, if you've already succeeded at self-defense, then there is no justification for more force unless the attacker reasserts themselves and that...

So this is why I love this team to talk about this stuff because, Steve, you've got the tactical experience and training, and Don, you've got the aftermath and the legal defense side of things. So we can see things from both sides before and after the self-defense shooting. But what I'm constantly delighted about is, Steve, that the things that make good tactical sense, this time and distance, the verbal commands, the de-escalation, the less-lethal options, that's good tactically because it's all less dangerous for you if you can defuse these situations without having to introduce deadly force. Don, all these things bolster your legal defense if, ultimately, you're forced to use deadly force as well.

Don West:

Yeah. And since you mentioned that, Shawn, let me suggest that idea, the idea of the goal is to break contact, the goal is to avoid the fight (Lesson #36: Avoid the fight), the goal is avoid using your gun, and there's the value in the legal system as well as frankly who wants to run the risk of getting shot if they can avoid the risk (Lesson #3: Understand the legal consequences), frankly, because you never know how it's going to turn out, frankly, that notion, I think creates a little tension in my world about stand-your-ground (Lesson #15: Don't stand your ground) versus breaking contact. When people hear “stand your ground”, legally, that means that you do not have a legal

requirement to retreat or attempt to retreat if you can safely do so before using deadly force if you are facing a deadly force threat. The problem with that is many, frankly. One of them is that the prosecutor in most jurisdictions will still be able to argue that by failing to retreat or to avoid the use of deadly force, you're acting unreasonably. It gives them a foothold in what otherwise might be a very good self-defense case.

It also, if it's not your mindset to get out of there when you can, you wind up in a situation that you could otherwise avoid, which greatly, of course, increases the risk to yourself. If you are in a true stand-your-ground situation, where legally you do not have to retreat or avoid, and you're confronted with a deadly force threat, you can disregard, I guess, if you're willing to take the risk, other avenues to avoid. But when you do that, when you in fact meet force with force when you had some other alternative, you'd better be right, not just tactically, you'd better be right legally too. And if somebody can criticize your judgment, can put you in a position that makes you vulnerable to the prosecutor disproving any one element, any one element of self-defense, it all falls apart.

And then you're in big, big trouble because if you lose one element, then you've lost the entire self-defense protection. And as we all know, being an affirmative defense, it's a defense of avoidance and confession. So you're admitting, you're the guy, you're admitting did it, you're admitting you pulled the trigger intentionally, and you're putting all your eggs in that basket. So that's what I'm saying. If you find yourself in a stand-your-ground scenario where legally you can, but you have options and don't exercise them, you'd better be right.

Shawn Vincent:

Well, and stand-your-ground is not so cut-and-dried is all of that. Because, what it might mean is that the defense doesn't have to prove that they made some effort to retreat in a stand-your-ground state, as they may need to do in a duty-to-retreat state. But that doesn't stop the prosecutor in most of these stand-your-ground states from being able to point out alternative actions that were reasonable that the defender chose not to pursue. And a jury can still hold that against them, not to the stand-your-ground standard potentially, but as to the reasonableness of their actions. And their actions

must be reasonable. And frankly, if they had a chance to get away or use some sort of less lethal alternative and they chose not to, it's harder to say that their motives were fear for their life or bodily injury—and something else, maybe, more nefarious.

Don West:

Yeah, I think that's really a good way of establishing what I'm trying to say is you better be right because there better not be something the prosecutor can take advantage of, that you were angry or that you were looking for a fight. There better not be any other, as you might say, chinks in the armor. You'd better be right that the rest of the defense is solid.

Shawn Vincent:

And Steve, don't you find, because ... whether it's real-life scenarios or even in a training situation, because I've done firearms training and you've got live rounds and you're in a circumstance, the stakes are high. I think whenever you have a firearm that's loaded in your hands and you get put through some exercises, you're in a different mental space than just walking down the street. So people are under pressure, they're under stress, is what I'm trying to say. And when that happens, sometimes you make decisions without thinking them through. You don't have time to necessarily think them through. So that decision is either going to be limbic or it's going to be you defaulting to your training and the plan that you talked about.

And so if your plan and your training—follows a mindset— Don, that I'm going to do whatever I can to break contact before I have to shoot this guy, then when that situation comes and you're under that pressure, your behaviors are going to reflect that set of values and those goals. And if those aren't your goals and you're under pressure and stress, then you might go limbic and make exactly the wrong decisions.

Don West:

Well said. Except I don't know what “limbic” means.

Shawn Vincent:

Your lizard brain takes over.

Don West:

There you go.

Steve Moses:

Lizard brain.

Don West:

Got it.

Steve Moses:

One of the things I want to say about stand-your-ground laws. I like that the law exists, and I hate the stand-your-ground mindset. And legal perspective aside, if I don't have that stand your-ground-mindset, then my chances of probably getting in a gunfight and getting shot, killed, or having to defend, I mean, do anything else to defend myself, go way down. So basically, I've taken away, right there, one of my options from the very beginning, which was I'm going to create distance or avoid. So man, I'm all for taking advantage of it. That way, I don't have to worry about someone saying, "Well, you know what, he's relying on stand your ground." No, I wasn't relying on stand my ground. I had no other options right then.

Shawn Vincent:

Right? Isn't that right, Don? Because we've experienced this firsthand. It's a procedural protection for a defender. It's one less threshold that has to be made. But it's not meant to guide your behavior.

Don West:

That's my view. I have the same view as Steve. I think that I'm glad that it's there, as a lawyer, as Shawn said—just one less thing to worry about in some ways. But it's not something that you should take advantage of so as to exploit that because that'll

backfire. In my view, it'll make you far less sympathetic to a jury and create other hurdles you may have to overcome.

Shawn Vincent:

Well, “don't stand your ground” is lesson number 15. So we're going to have an opportunity to do a whole hour on that as well.

Steve Moses:

The more skills and knowledge you have, the more options you have and the greater amount of time you have to make the most appropriate response (Lesson #2: Get firearms and self-defense training). And I just think that's so critical.

Shawn Vincent:

That's really what we talked about the whole time is options. The more options you have besides lethal force, and the more time you give yourself to explore those options, then tactically, you're likely to have a better result. Legally, you're likely to have a better result.

All right, everybody, that's the podcast for today. I appreciate you listening through to the end. We're going to be back in one month with lesson two, which is: Get firearms training. We'll talk to Steve in particular about how important that is, and to Don about the ramifications of how your training, or lack thereof, can affect your legal defense. Until then, as always, be smart, stay safe, and take care.